



northern  
beaches  
council

# AGENDA

## **NORTHERN BEACHES LOCAL PLANNING PANEL**

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

**FRIDAY 21 JULY 2023**

Beginning at 10:30 AM for the purpose of considering and determining matters included in this agenda.

A handwritten signature in blue ink, appearing to read 'Am'.

**Adam Richardson**  
**Acting 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 meeting 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 Friday 21 July 2023

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Northern Beaches Local Planning Panel held 5 July 2023.....	3
<b>3.0</b>	<b>CATEGORY 3 APPLICATIONS</b>	
<b>4.0</b>	<b>PUBLIC MEETING ITEMS.....</b>	<b>5</b>
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4.2	DA2022/1869 - 4-6 Niangala Close, Belrose - Alterations and additions to Belrose Super Centre including six (6) new tenancies for use as specialised retail premises and reconfiguration of the existing car park. ....	82
<b>5.0</b>	<b>NON PUBLIC MEETING ITEMS.....</b>	<b>148</b>
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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 5 JULY 2023**

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#### **RECOMMENDATION**

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

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## 4.0 PUBLIC MEETING ITEMS

ITEM 4.1	DA2023/0020 - 48 EUROBIN AVENUE, MANLY - DEMOLITION WORK AND CHANGE OF USE OF SITE TO AN EDUCATIONAL ESTABLISHMENT (STELLA MARIS COLLEGE) AND INSTALLATION OF TEMPORARY DEMOUNTABLE BUILDINGS.
AUTHORISING MANAGER	Rod Piggott
TRIM FILE REF	2023/428031
ATTACHMENTS	1 <a href="#">↓ Assessment Report</a> 2 <a href="#">↓ Site Plans &amp; Elevations</a> 3 <a href="#">↓ Clause 4.6</a>

### PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection and the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

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### 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 Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/0020 for Demolition work and change of use of site to an educational establishment (Stella Maris College) and installation of temporary demountable buildings. on land at Lot CP SP 12627, 50 Eurobin Avenue, MANLY, Lot 1 SP 12627, 1 / 50 Eurobin Avenue, MANLY, Lot 2 SP 12627, 2 / 50 Eurobin Avenue, MANLY, Lot 42 DP 14521, 48 Eurobin Avenue, MANLY subject to the conditions set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/0020
<b>Responsible Officer:</b>	Jordan Davies
<b>Land to be developed (Address):</b>	Lot CP SP 12627, 50 Eurobin Avenue MANLY NSW 2095 Lot 1 SP 12627, 1 / 50 Eurobin Avenue MANLY NSW 2095 Lot 2 SP 12627, 2 / 50 Eurobin Avenue MANLY NSW 2095 Lot 42 DP 14521, 48 Eurobin Avenue MANLY NSW 2095
<b>Proposed Development:</b>	Demolition work and change of use of site to an educational establishment (Stella Maris College) and installation of temporary demountable buildings.
<b>Zoning:</b>	Manly LEP2013 - Land zoned R1 General Residential
<b>Development Permissible:</b>	Yes, under SEPP (Transport and Infrastructure) 2021
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Good Samaritan Education
<b>Applicant:</b>	Robinson Urban Planning Pty Ltd
<b>Application Lodged:</b>	16/01/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Other
<b>Notified:</b>	20/01/2023 to 03/02/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	29
<b>Clause 4.6 Variation:</b>	4.4 Floor space ratio: 15%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 2,828,205.00

### EXECUTIVE SUMMARY

This development application seeks consent for 'demolition work and change of use of site to an educational establishment (Stella Maris College) and installation of temporary demountable buildings for a period of 2 years.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the application receiving 29 submissions and the proposed demountable building having a floor space ratio that exceeds the 0.6:1 FSR development standard by 15%.

A key issue that has been raised in the submissions by the community is the concern about what will happen to the site following removal of the demountable building noting that the use of the land is proposed to remain as a school. The community have raised concern that the change of use will open up the possibility of the school undertaking further development via a development application or via the Complying Development provisions within the *SEPP (T&I) 2021*, noting that Complying Development can allow for a buildings in excess of the Manly LEP height standard of 8.5m. The submissions raise concern that further expansion of the school will erode the residential streetscape and will be incompatible with the heritage buildings on the northern side of Eurobin Avenue. At this stage, the school has not confirmed any particular plans for a permanent building on the site.

The concerns in relation to heritage have been addressed within this report. Of importance, the dwellings on 48 and 50 Eurobin are not heritage listed and are not within an identified heritage conservation area under the Manly LEP 2013.

Other assessment issues include the temporary demountable having a non-compliance with the Floor Space Ratio (15% exceedance), front setback, rear setback and open space. The non-compliances have been supported on merit given the low scale nature of the building (between 4m and 5m in height), the absence of any unreasonable amenity impacts and the fact that the demountable will be removed after 2 years and therefore any perceived impacts are only temporary, with the demountable allowing the operation of the school to continue whilst construction is carried out on the main campus. This report concludes with a recommendation that the NBLPP grant approval to the development application, subject to conditions outlined at the end of this report.

## PROPOSED DEVELOPMENT IN DETAIL

The proposal is for the 'Extension of Stella Maris College' which consists of a 'Change of use (to educational establishment), demolition and installation of a demountable building. Specifically, the proposal consists of:

- Demolition of the existing dwellings and associated structures on 48 and 50 Eurobin Avenue;
- Removal of 13 trees (none of the trees to be removed are 'prescribed trees' and are all exempt under the DCP);
- Installation of a single storey pre-fabricated temporary demountable building containing eight (8) General Learning Spaces (GLA's);
- Associated site works including turf and landscape planting and front boundary fencing;
- Change of use of 48 and 50 Eurobin Avenue to a 'educational establishment (school)' to be used in association with the existing school at the adjoining site known as Stella Maris College;
- The temporary demountable building is to be in place for 24 Months from the date of Occupation. At the conclusion of 24 months, the building is to be removed;
- Following removal of the building, the sites 48 and 50 Eurobin Avenue are to be made good with turf. The area is proposed to be used as open space in association with the school.

The application does not seek to amend the existing staff or student population numbers, car parking arrangement or hours of school use.

## ASSESSMENT INTRODUCTION

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

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

#### SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
 Manly Local Environmental Plan 2013 - 5.21 Flood planning  
 Manly Local Environmental Plan 2013 - 6.2 Earthworks  
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management  
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation  
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping  
 Manly Development Control Plan - 4.1.10 Fencing

#### SITE DESCRIPTION

<b>Property Description:</b>	Lot CP SP 12627 , 50 Eurobin Avenue MANLY NSW 2095 Lot 1 SP 12627 , 1 / 50 Eurobin Avenue MANLY NSW 2095 Lot 2 SP 12627 , 2 / 50 Eurobin Avenue MANLY NSW 2095 Lot 42 DP 14521 , 48 Eurobin Avenue MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site consists of two (2) allotment located on the southern side of Eurobin Avenue.</p> <p>The site is a regular shape with a frontage of 30.5m along Eurobin Avenue and a depth of 30.5m. The site has a surveyed area of 931.3m<sup>2</sup>.</p> <p>The site is located within the R1 General Residential zone and accommodates a detached dwelling house (single storey) and a two storey duplex. The site is not heritage listed or is not located within a heritage conservation area. There are surrounding buildings which are heritage listed including the school to the east and dwellings across the road to the north.</p> <p>The site has a relatively flat topography throughout.</p> <p>The site has a number of trees that vary between 4m and 12m in height. Of these trees, the majority are 'exempt' species under the Manly DCP and do not require consent for</p>

removal. Tree 78 has been approved for removal under a separate application and T79 is poor health and is identified for removal.

**Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by a mixture of dwelling types and the school. Immediately adjoining the site to the east is the recently construct three storey school building (containing parking beneath) which forms part of the Stella Maris School. The school site is heritage listed. To the north across the road are two storey residential dwellings, some of which are duplexes or residential flats. The buildings to the north are heritage listed under the Manly LEP. To the south are detached residential dwellings (not heritage listed). To the west is a two storey residential dwelling (not heritage listed).

The predominant character to the north, west and south are residential detached dwellings and duplexes, while the character to the east comprises of the Stella Maris school buildings which are up to 3 stories.

Map:



**SITE HISTORY**

The two sites 48 and 50 Eurobin Avenue have beend used for residential purposes for an extended period of time. A search of Council's records has revealed there are no recent applications on 48 or 50 Eurobin Avenue except for a recently approved Tree Application (TA2022/0796) to remove one (1) Agonis Flexuosa at the rear of 48 Eurobin Avenue.

On the adjoining site is a school known as 'Stella Maris College'. There was a development application

approved by the Sydney East Regional Panel under 232/2014 for "Re-development of an existing Educational Establishment including Development partial demolition, construction of three (3) storey buildings with basement car park, refurbishment of buildings, an increase in student numbers by 200, landscaping and a covered play area - Stella Maris College". The first stage of this the redevelopment has been completed and consists of the new building constructed on the common boundary of 50 Eurobin Avenue.

The application 232/2014 approved an increase of the student numbers by 200 (1,150 student population by 2025) and increase the number of staff from 125 to 136 by 2025.

The approved second stage of the development is yet to be undertaken, however is scheduled to commence in the coming years. The second stage comprises of an Arts Building and comprises of:

- Demolition of the existing two and three storey building within the north-east portion of the site.
- Construction of a new three storey building to replace the abovementioned demolished structures, which will contain art, design and technology classrooms as well as food technology, a multimedia room and GLAs. A new open space terrace is to be located on the roof of the new art building above the multimedia and design rooms.
- Refurbishment of the existing C Bock along the eastern boundary of the site adjacent Collingwood Street.
- Upgrading and reconfiguration of landscape treatments to the centre courtyard and provision of a new open deck space above the canteen.
- New weather-resistant enclosure positioned over the basketball court to create an all-weather play area.

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;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&amp;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>

Section 4.15 Matters for Consideration	Comments
	<p>Clauses 36 and 94 of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Acoustic Report, flooding, heritage, clause 4.6, clarification of tree removal and further details as to the alternatives for student relocation.</p> <p>Clause 61 of the EP&amp;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>Clauses 62 and/or 64 of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p>Clause 69 of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter is not relevant to this application.</p> <p>Clause 69 of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
<p>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>	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification &amp; Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application 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 20/01/2023 to 03/02/2023 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 process council is in receipt of 29 submission/s from:

Name:	Address:
Ms Ashley Jane McDonald	51 Eurobin Avenue MANLY NSW 2095
Jennifer Margaret McMurtry	47 Eurobin Avenue MANLY NSW 2095
Hugh McDonald	51 Eurobin Avenue MANLY NSW 2095
Ms Tanya Lea Reid	25 Eurobin Avenue MANLY NSW 2095
Withheld Mr Michael Anthony Breen	MANLY NSW 2095
Withheld Mr Michael Anthony Breen	2 / 23 Eurobin Avenue MANLY NSW 2095
Ms Deborah Mary Brooks	10 Eurobin Avenue MANLY NSW 2095
Michael Joseph Kenneally	21 A Iluka Avenue MANLY NSW 2095
Ms Suzannah Louise Esdaile	65 Eurobin Avenue MANLY NSW 2095
Mr Graham Jeffrey Woods	18 Iluka Avenue MANLY NSW 2095
Withheld Graham Breakwell	MANLY NSW 2095
Withheld Graham Breakwell	10 Eurobin Avenue MANLY NSW 2095
Withheld Ms Denise Fay Luey	MANLY NSW 2095
Withheld Ms Denise Fay Luey	10 A Eurobin Avenue MANLY NSW 2095
Withheld Mrs Helen Hargreaves Duffy	MANLY NSW 2095
Withheld Mrs Helen Hargreaves Duffy	6 Iluka Avenue MANLY NSW 2095
Ms Maeve Caitriona Beary	13 Iluka Avenue MANLY NSW 2095
Mr Michael John Cohen	10 Eurobin Avenue MANLY NSW 2095
Mr Mark Bruce Willson	167 Seaforth Crescent SEAFORTH NSW 2092
Mr Jonathan Stephen Lord	9 Eurobin Avenue MANLY NSW 2095
Mr Adrian James Breakspear	1 / 49 Eurobin Avenue MANLY NSW 2095
Mr Andrew Charles Harrison	55 Eurobin Avenue MANLY NSW 2095

Name:	Address:
Ms Lisa Jane Russel	1 / 41 Eurobin Avenue MANLY NSW 2095
Mr Darren Troy Moore Mrs Lisa Jane Moore	17 Eurobin Avenue MANLY NSW 2095
Boston Blyth Fleming Pty Ltd Mrs Felicity Jane Gibbins Weaver	1 / 9 Narabang Way BELROSE NSW 2085
Mr Phillip Vincent Silipo	4 Iluka Avenue MANLY NSW 2095
Mr Stephen John Bowhill	21 Eurobin Avenue MANLY NSW 2095
Withheld	MANLY NSW 2095
Mrs Jill Pleban	28 Collingwood Street MANLY NSW 2095
Ms Debra Charlotte Austin	3 Iluka Avenue MANLY NSW 2095
Mr Christopher Paul Lake	1 Iluka Avenue MANLY NSW 2095
Mrs Leonie Anne Lake	1 Iluka Avenue MANLY NSW 2095
Mr Matthew Bryce Cumberworth	2 / 9 Iluka Avenue MANLY NSW 2095

The applicant has provided a response to each of the submissions in a separate document submitted to Council, following conclusion of the notification period titled "Report - Response to submissions".

Council has received 24 unique submissions objecting to the proposal, with one (1) submission in support.

The following issues were raised in the submissions and are addressed by Council below:

- The proposal will have a negative impact of the streetscape and the surrounding heritage items which include the heritage listed buildings along the northern side of Eurobin Avenue. The existing buildings on 48 and 50 Eurobin Avenue should not be demolished as they contribute to their heritage setting and residential street character.
- Consent should not be granted without a known future masterplan for the school. The proposal to change the use of the land to a 'school' may enable further development under Complying Development via the *SEPP (T&I) 2021* that allows building heights in excess of local planning controls (the SEPP allowing up to 22m height for schools).
- The use of the site for the purpose of the school should cease after 2 years (to coincide with the removal of the demountable building) and a condition should be imposed in any consent issued.
- The demountable buildings do not meet the built form controls under the Manly DCP/LEP including front and rear setback, open space and floor space ratio.
- The proposal is not consistent with the objectives of the R1 General Residential Zone under the Manly LEP 2013.
- Objection to the removal of trees and insufficient landscaping for the new site.
- The approved landscape plan with DA232/2014 provided a landscaped strip along the boundary with 50 Eurobin Avenue and 4 Iluka Avenue. The proposal impacts this landscape strip. A modification application should be required to amend the approved landscape plan.
- Increased noise impacts.
- Increase to traffic and existing parking issues at the school.
- Solar access and privacy impacts.

The above issues are addressed as follows:

- **The proposal will have a negative impact of the streetscape and the surrounding heritage items which include the heritage listed buildings along the northern side of Eurobin Avenue. The existing buildings on 48 and 50 Eurobin Avenue should not be demolished as they contribute to the heritage setting and residential street character.**

Comment: The dwellings on 48 and 50 Eurobin are not heritage listed and are not within an identified heritage conservation area under the Manly LEP 2013 and therefore, their demolition would not be a reason to refuse the application (noting these building could be demolished under a Complying Development Certificate).

The demountable building has a low height and any impact upon the streetscape is considered to be temporary only given it will be removed after 2 years. As part of the proposal advanced landscape screening along the front boundary will be required to help soften the street presentation. The existing school buildings along the southern side of Eurobin avenue form part of the street character and therefore the street is not exclusively residential in character.

See Council's heritage officer's comments later in this assessment report for further comments on heritage impacts.

- **Consent should not be granted without a known future masterplan for the school. The proposal to change the use of the land to a 'school' may enable further development under Complying Development via the SEPP (T&I) 2021 that allows building heights in excess of local planning controls (the SEPP allowing up to 22m height for schools).**

Comment: The current application proposes the sites as 'open space' for the school following removal of the demountable buildings.

In considering this application, it is recognised that in granting consent to change the land use to a school may allow the provisions of the SEPP (T&I) 2021 to be utilised by the school to construct a new building. However, it is important to note that Complying Development is a legitimate approval pathway that allows infrastructure to be delivered when the development standards are met which include setbacks (based on building height), landscaping, privacy and overshadowing. If development was sought to occur outside of these standards a development application would need to be submitted to Council. It is noted that a complying development cannot alter any existing operational conditions of the school relating to hours of operation, noise, car parking, vehicular movement, traffic generation, loading, waste management, landscaping or student or staff numbers.

Unlike the numerically prescribed side and rear setback provisions contained within the SEPP T & I 2021, the front setback requirement within the SEPP T&I 2021 requires a front setback *"that is not less than the average distance of the front setbacks of all existing development that is located within 70m of the building"*. The existing residential dwellings in the R1 Zone (46, 48 and 50 Eurobin Avenue) have an average setback of approximately 5m (taking into account their varied facades). The temporary demountable building will have a setback less than this average (3.268m). To ensure that the setback of the temporary demountable building does not contribute to reducing predominant front setback character of the R1 Zone and enable a CDC to utilise the proposed setback, it is recommended by condition that the first 5m of the front setback zone be reinstated as deep soil landscaping and be maintained as such as part of the operation of the school, following the removal of the temporary building. As mentioned above, the SEPP T&I 2021 provisions state that a CDC cannot contravene a consent condition in relation to

landscaping and therefore, this condition is considered to prevent a CDC being issued with a setback of less than 5m, inconsistent with the established R1 Zone character street setback.

The applicant has advised Council that *"At the time of preparing this DA, the College has not determined the proposed longer-term use for the site, given the significant capital cost involved in purchasing these new sites and also the cost of undertaking the construction of the new Creative Arts Building"*. Any future development of the site can be dealt with through the legitimate planning pathways DA or CDC, with both sets of controls requiring consideration to building setbacks, privacy, noise and overshadowing. Given a school is permitted within the R1 Zone and any future buildings will be subject to an approval, refusal of the application due to there being no current masterplan is unwarranted.

The applicant has outlined the immediate need for the expansion of the school onto the subject site and temporary demountable. The school has expressed the need to relocate eight (8) classrooms outside of the existing school boundary to facilitate the second stage of the construction under the 2014 approval for the redevelopment of the school. The school has explained there would be no physical space within the existing campus during construction. The applicant has outlined the various options considered by the school to accommodate the student population during construction, including temporarily requiring students relocate during school hours by walking via public roads to an alternate site at 270 Pittwater Road. However, the school has indicated that the current proposal is the superior outcome with regards to student safety and the functionality of the school during construction, noting that 48 and 50 Eurobin is under the schools ownership and the 'schools' are permitted in the R1 Zone via the SEPP.

- **The use of the site for the purpose of the school should cease after 2 years (to coincide with the removal of the demountable building) and a condition should be imposed in any consent issued.**

Comment: The community submissions have suggested that any consent granted should include a condition for the 'school' land use to cease once the temporary demountable have been removed, therefore removing opportunity for any building to be constructed the *SEPP (T&I) 2021* as complying development. In considering the public submissions Council has had regard to this suggestion, however ultimately do not consider such a condition to be warranted (or legitimate) given schools are a permitted use on the R1 Zone via the SEPP (T&I) 2021 and such a condition would be contrary to the purpose of the SEPP (T&I) 2021.

- **The demountable buildings do not meet the built form controls under the Manly DCP/LEP including front and rear setback, open space and floor space ratio.**

Comment: Each of the built form non-compliances are separately addressed within this report. The non-compliances are supported on merit given the low scale nature of the building (between 4m and 5m height), the absence of any unreasonable amenity impacts and the fact that the demountable will be removed after 2 years and therefore any perceived impacts are only temporary, with the demountable allowing the operation of the school to continue whilst construction is carried out on the main campus. As part of the proposal and Council's conditions, a landscape screen (consisting of advanced species) is to be established along the street frontage and common boundary of the site to soften presentation of the single storey building to the street.

- **The proposal is not consistent with the objectives of the R1 General Residential Zone under the Manly LEP 2013.**

Comment: Consideration of the R1 General Residential Zone objectives have been addressed later within this report under the Clause 4.6 Assessment. It is considered that the proposal is consistent with the zone objectives.

- **Objection to the removal of trees and insufficient landscaping for the new site.**

Comment: The majority of trees to be removed are exempt species under the DCP (either non-native or less than 5m). One tree has been approved for removal under a separate application and one tree is in poor health. Council's landscape team have raised no concern with the proposed tree removal for those reasons. The proposal will provide for landscape screening around the perimeter of site which is to consist of advanced species (as a condition) to expediate the effectiveness of the landscape screen to soften the building as viewed from the street and adjoining sites. The deep soil zones around the site perimeter is sufficient to accommodate the landscape screening around the temporary building.

- **The approved landscape plan with DA232/2014 provided a landscaped strip along the boundary with 50 Eurobin Avenue and 4 Iluka Avenue. The proposal impacts this landscape strip. A modification application should be required to amend the approved landscape plan.**

Comment: It is noted that the building known as the 'Scholastica building' has been completed and an occupation certificate issued. As such, modification of this consent to amend any landscaping plan is not warranted. The purpose of this landscape strip along the western side of the 'Scholastica building' was to create a landscape buffer between between the school and the residential dwelling, which is now under the ownership of the school.. As the proposal now includes 48 and 50 Eurobin as part of the school, removal of the landscape buffer to accommodate the temporary demountable building does not directly impact the visual outcome for an adjoining residential property. A new landscape buffer will be provided on the western side of the temporary demountable building.

For completeness, a condition of consent is recommended that following the removal of the temporary demountable building the landscaping required along the western side of the Scholastica Building is to be reinstated as per the requirements of the landscape plan under DA 2014/232.

- **Increased noise impacts.**

Comment: An acoustic report has been provided that addresses the use of the demountable building and the use of the site as 'open space' following removal of the demountable building. Subject to adherence to the recommendations of the acoustic report (which will be referred in the consent) there will be no unreasonable acoustic impacts on adjoining residential dwellings.

- **Increase to traffic and existing parking issues at the school.**

Comment: This application does not seek to increase the staff or student numbers, with the existing status quo of the school maintained. Any subsequent development applications for permanent building will be assessed with regard to traffic impacts. A complying development certificate cannot increase the student capacity of the school or alter the vehicular access arrangements.

- **Solar access and privacy impacts.**

Comment: The rear setback non-compliance is not considered to result in unreasonable overshadowing, with the adjoining property maintaining at least 4 hours solar access to their

rear private open space as shown in the shadow diagrams submitted, compliant with the controls. Privacy towards the rear boundary can be mitigated through the existing landscaping, existing boundary fencing and proposed landscaping which will be required to consist of advanced species landscaping. There are no windows orientated towards the side boundaries.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>Supported - Subject to conditions</b></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 Stage.</p>
Environmental Health (Acid Sulfate)	<p><b>Supported - Subject to conditions</b></p> <p><b>General Comments</b></p> <p>Environmental Health has reviewed this proposal and the area is in a Class 4 Acid Sulphate Soil zone</p> <p>It does not appear that any works will be undertaken below 2 meters or will lower the water table.</p> <p><b>Recommendation</b></p> <p>APPROVAL - no conditions</p>
Environmental Health (Contaminated Lands)	<p><b>Supported - Subject to conditions</b></p> <p><b>General Comments</b></p> <p>Environmental Health has reviewed the proposal and the Preliminary Site Investigation by Reditus Consulting Pty Ltd Project No. 22246</p> <p>It states that the site is suitable for development, with further investigations required. Conditions recommended.</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>
Environmental Health (Industrial)	<p><b>Supported - Subject to Conditions</b></p>

Internal Referral Body	Comments
	<p><b>General Comments</b></p> <p>Environmental Health has reviewed the proposal including the Noise Impact Assessment For Development Application by JHA Acoustic Services Project No. 210263, and conditions are recommended</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>
Landscape Officer	<p><b>Supported - Subject to conditions</b></p> <p><u>Amended Plans Comment 26/05/2023</u> Amended plans, additional Arborist's comment, and Heritage Report are noted.</p> <p>The Heritage Report confirms that there are no linked landscape elements impacted by the works.</p> <p>The Arborist's Statement re-confirms that trees to be removed are exempt or approved for removal under previous application. (Tree 78 was approved for removal under TA2022/0796)</p> <p>If the proposal is to proceed, screen planting as indicated on the Landscape Plans will assist in providing a buffer to adjoining properties.</p> <p>It is further recommended that 2 trees selected from Manly Development Control Plan Schedule 4 - Part B - Native Tree Selection be planted in accordance with the DCP requirements.</p> <p>Previous issues raised with regard to landscape issues, however, if the proposal is to be supported on planning considerations, recommended conditions have been provided to maximise landscape outcomes.</p> <p><u>Original Comment</u> The application seeks consent for demolition work and change of use of site to an educational establishment (Stella Maris College) and installation of temporary demountable buildings.</p> <p>The Plans and Arborist's Report indicate that all trees from the site are to be removed.</p> <p>It is noted that the SEE states that no trees are to be removed to accommodate the proposed works.</p> <p>However there are at least two trees indicated on the Survey Plan to be 5m height, and a further eight trees of 5m or more height to be</p>

Internal Referral Body	Comments
	<p>removed.</p> <p>It is noted that Manly DCP Dictionary defines a tree as: <b>tree</b> means a palm or woody perennial plant, single or multi stem greater than 5m in height.</p> <p>It is apparent therefore that some 13 trees are to be removed to accommodate the works.</p> <p>It is noted that the majority of the trees to be removed are listed in Manly DCP as Exemption Species (Figure 7A). Whilst the species listed in Fig 7A are noted as suitable for removal without consent (subject to certain conditions), they are still defined as trees if they fit the dictionary definition.</p> <p>The Landscape Plan provided indicates replanting of 5 palm trees which could grow to a height that meet the definition of a tree under the DCP.</p> <p>Under Section 4.1.5.2 Landscaped Area each lot currently requires planting of at least 1 tree from the list of native trees in Schedule 4 Part B.</p> <p>Trees proposed to be planted do not reflect the species in Schedule 4.</p> <p>The proposed demountables also impact upon the landscaped open space area provided .</p> <p>The issue of the application for change of use from Residential to educational establishment school is left for planning consideration.</p> <p>However under the current Zoning, the proposal does not comply with landscape requirements.</p> <p>If however the proposal is to be supported on planning considerations, recommended conditions have been provided.</p>
NECC (Coast and Catchments)	<p><b>Supported - Subject to conditions</b></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Plans and reports lodged in support of the DA;</li> <li>• Coastal Management Act 2016;</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021;</li> </ul> <p>and</p> <ul style="list-style-type: none"> <li>• Manly LEP 2013 and Manly DCP 2013.</li> </ul> <p><b>Coastal Management Act 2016</b></p> <p>The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to this</p>

Internal Referral Body	Comments
	<p>DA. The proposed development is considered to be largely consistent with the objects, as set out under Part 1 Section 3 of the Coastal Management Act 2016.</p> <p><b>State Environmental Planning Policy (Resilience &amp; Hazards) 2021</b> The subject land has been included on the 'Coastal Environment Area' map and in part on the 'Coastal Use Area' map under the State Environmental Planning Policy (Resilience &amp; Hazards) 2021 (SEPP R &amp; H). Therefore, divisions 3, 4 and 5 of SEPP R &amp; H applies to this DA. As the proposed development is not located on the foreshore and management plans for the impacts of stormwater disposal and erosion and sediment control adequately address these matters to reduce negative impacts on the receiving waters of Manly Lagoon, the development is not likely to cause increased risk of coastal hazards on that land or other land. Consequently, the development proposal is considered to satisfy the relevant requirements of SEPP R &amp; H, subject to conditions.</p> <p><b>Manly LEP 2013 and Manly DCP 2013</b></p> <p>No other coastal planning or development controls relevant to the subject DA were identified.</p>
NECC (Development Engineering)	<p><b>Supported - Subject to conditions</b></p> <p>The subject site is flood affected and as such does not require OSD. Collection and connection of stormwater from the site to the kerb in Eurobin Ave is acceptable. The proposal includes the demolition of the existing dwellings and no proposed vehicular access point. As part of the works the existing driveway crossings (3) are to be reinstated to kerb, footpath and turf to provide additional on street parking. Suitable conditions for this work is included.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>
NECC (Flooding)	<p><b>Supported - Subject to conditions</b></p> <p>The development proposes to demolish two dwellings at 48 and 50 Eurobin Ave and consolidate the two lots with change of use and construct a single storey refabricated temporary demountable educational establishment which proposed to be removed after two years as part of this application. The property is flood affected, in Medium Flood Risk Precinct area. The property is affected by Flood Life Hazard Category H5. A flood evacuation plan has been prepared and evacuation route provided with a ramp leading from the eastern entrance of the proposed demountable building to the adjacent existing Scholastica Building at the southern side of the campus. The proposed evacuation route proposed to be entirely above the flood planning level of 3.64m AHD.</p> <p>Subject to conditions the development is compliant with Council's</p>

Internal Referral Body	Comments	
	flood related development controls.	
Strategic and Place Planning (Heritage Officer)	<b>Supported - Subject to conditions</b>	
	HERITAGE COMMENTS	
	Discussion of reason for referral	
	The proposal has been referred to Heritage as the subject property is in the vicinity of a heritage item:	
	<b>Item I154 - Group of 2 storey residential flat buildings -</b> Northern side of Eurobin Avenue	
	Details of heritage items affected	
	Details of the item as contained within the Northern Beaches inventory is as follows:	
	<b>Item I154 - Group of 2 storey residential flat buildings</b>	
	<u>Statement of significance</u>	
	A fine example of flat buildings.	
	<u>Physical description</u>	
	Two to three storey brick flats.	
	Other relevant heritage listings	
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
Australian Heritage Register	No	
NSW State Heritage Register	No	
National Trust of Aust (NSW) Register	No	
RAIA Register of 20th Century Buildings of Significance	No	
Other	No	
Consideration of Application	<p>The proposal seeks consent for the demolition of the existing buildings on 48 and 50 Eurobin Avenue, consolidation of these sites and the construction of a temporary demountable building for up to 24 months, to be used in association with Stella Maris College, including the change of use of the subject site from a residential to educational use and signage. The subject site is not located within a heritage conservation area (HCA) pursuant to Manly LEP 2013, however it is located within the vicinity of a group listed heritage item.</p>	
	<p>The existing dwellings at 48 and 50 Eurobin Avenue, Manly are not</p>	

Internal Referral Body	Comments
	<p>heritage listed, however they are from the same period of the heritage listed “a group of two storey residential flat buildings”, and they both are considered to contribute positively to the existing context and the streetscape. The applicant may consider to retain and/or adaptive reuse of these buildings, however, if it is not a consideration, the proposed building form should be complementary to the context and to the heritage item across the road. This could be achieved by providing some articulation to the facade and by using complementary materials, finishes and colours. Although, the proposal is for temporary (24 months) structures on the subject site, considerations should be given to comply with the relevant controls of <i>Manly DCP 2013 - 3.2.1.1 Development in the vicinity of heritage items, or conservation areas</i> and <i>3.2.1.2 Potential Heritage Significance</i>. The impact of the proposed works upon the significance of the heritage items should be assessed in the Statement of Environmental Effects.</p> <p><b>Revised Comments - 05 June 2023</b></p> <p>The amended architectural drawings, submitted on 28 April 2023 have not resolved any concerns raised by Heritage earlier. A HIS has been provided which concludes that the existing properties would not meet any of the Heritage Manual criteria for identification as a place of local significance. However, the same report acknowledges that both of the existing properties retain the original built form and the original fabric - internal and external. Therefore the buildings are considered to be contributory to the existing context and the loss of any building that contributes to the character of the area would not be supported by Heritage unless the place is incapable of reasonable use or where it would not be technically feasible to make it useable. Therefore, Heritage retain the same opinion for a more responsive heritage design for 48 and 50 Eurobin Avenue; and a condition is required on the eventual development consent for a full and complete photographic archival recording of both properties and for it to be provided to Council.</p> <p><b>Revised comments - 14 June 2023</b></p> <p>The applicant has provided additional information regarding the need for the proposed demountable buildings to support the continue school operation during construction of Stage 2 of their 2014 approval.</p> <p>Further to a preliminary investigation - undertaken by Heritage into the history and potential significance of the existing buildings, and based on a preliminary assessment against the Heritage NSW criterion contained within <i>Assessing Heritage Significance</i> (NSW office of Environment and Heritage), they are considered to not be of significance individually. However, if they were considered as part of a potential heritage conservation area as indicated by the 2016 Review, is it agreed they would be a contributory item and worthy of protection and also</p>

Internal Referral Body	Comments
	<p>it is understood that the existing buildings are incapable of reasonable use for the school. Heritage also had required a more responsive design to the heritage context, however, the applicant has demonstrated that alternatives have been investigated and the submitted proposal is the most viable option for the school.</p> <p>Although the proposed design is considered inappropriate within the existing heritage context and does not meet the requirements of Heritage Considerations section of Manly DCP 2013, given these demountable buildings are proposed as temporary structures, and it will be conditioned to remove the buildings after 24 months and return to landscape open space, the impact of the proposed works upon the significance of the heritage items is considered acceptable.</p> <p>Therefore, no objections are raised on heritage grounds subject to the <b>removal of the proposed demountable buildings after 24 months and return to landscape open space</b> and full <b>photographic archival recording</b> of the existing buildings.</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p> <p>Further Comments</p>
Strategic and Place Planning (Urban Design)	<p><b>Supported - Subject to conditions</b></p> <p>This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and coordination with the overall assessment.</p> <p>The applicant's proposal seeks to demolish the existing houses at 48 and 50 Eurobin Avenue, Manly, and erect temporary demountable classrooms for up to 24 months. After that, the site is to be made good with turf.</p> <p>The proposal does not comply with the DCP setback controls nor the LEP FSR controls, and it needs to be apparent in the design of the demountable classrooms that the School Quality Design Principles have been incorporated.</p>

Internal Referral Body	Comments
	<p>The demountable classrooms are temporary in nature (24 months), and because of their temporary nature, non-compliances may be entertained, where otherwise they would not. However, Urban Design is concerned that accepting non-compliances because the demountable classrooms are temporary will form a precedent that impacts the streetscape and built form of any subsequent development. Greater certainty that any temporary non-compliance will not result in permanent non-compliances or set a precedent would make any temporary impacts on the streetscape and built form more palatable and potentially supportable. Urban Design would like any temporary non-compliances with the controls created by the acceptance of the temporary buildings shall not form a precedent for future breaches of controls.</p> <p>Urban Design understands there are approval routes other than a Council-approved Development Application, for example, SEPP Transport &amp; Infrastructure 2021, which incorporates development standards regarding height, side &amp; rear setbacks, front setbacks, design &amp; materials, noise, overshadowing, privacy, landscape, etc. Some of these controls differ from Northern Beaches LEP &amp; DCP controls, and in the case of the front setback, they are based on the average existing building line. Urban Design is concerned that accepting the temporary non-compliant 3.268m front setback will form a precedent for future development, reducing the prevailing &amp; average front setback and affecting the streetscape.</p> <p>The Urban Design Unit understand that Urban Design considerations are only one aspect of a complex planning assessment, and on balance, planning considerations may over-rule Urban Designs concerns. Urban Design request that the attached condition is incorporated into any approval so that the potential to ultimately reinstate the residential streetscape character of the part of Eurobin Ave by the subject sites is retained, and any temporary non-compliance doesn't become a precedent for a permanent change to the streetscape character.</p> <hr/> <p><b>Please note:</b> Regarding any view impacts and any impacts on solar amenity and overshadowing these matters will be dealt with under the evaluation of Councils Planning Officer. Any impacts of non-compliances regarding heritage will be dealt with under the evaluation</p>

Internal Referral Body	Comments
	<p>of Councils Heritage Officers, and any Landscape non-compliances will be dealt with under the evaluation of Councils Landscape Officers.</p>
Traffic Engineer	<p><b>Supported - Subject to conditions</b></p> <p>The application proposes demolition of existing buildings on No.s 48 &amp; 50 Eurobin Avenue and construction of temporary demountable classrooms on the land. Although the applicant advises that there will no increase in staff or student numbers the proposed buildings will be used to provide 8 new general learning areas presumably classrooms. It is therefore assumed likely that the work will accommodate increased student numbers if not now then in the future. The Statement of Environmental Effects lodged with the development application advises " the DA does not propose any change to the existing school population. The DA is to facilitate future/separate (unspecified) works on the Main Campus only". No traffic and parking impact assessment report has been provided to support the application so a review of the most recent DA has been undertaken in order to obtain relevant background information.</p> <p>The existing school provides offstreet parking for only 31 vehicles - all for staff. The existing school has approval for 1150 students and 140 staff. At the time of the schools last DA the applicant's traffic impact assessment advised that 10 staff members also parked at the Benedict campus (corner of Pittwater Road/Balgowlah Road) but that 80% of staff drove to the school. This means that approximately 71 staff members are currently parking on the residential streets around the site. Council has this year issued 15 resident parking permits with various restrictions on their days and times of use for school staff to park within the Ocean beach permit parking zone, the remaining staff members presumably park in unrestricted parking zones in Queenscliff or park within time restricted parking zones in surrounding streets or carparks within Manly.</p> <p>The school also provides no parking off-street for students. At the time of the schools last DA the applicant's traffic impact assessment advised that 35 senior students (4% of the school's total enrolment at the time) drove to school, given the current approved population of 1150 it is reasonable to assume that 4% of students still drive to school i.e 46 students. These students would be parking on-street in surrounding unrestricted residential areas.</p> <p>Before and after school drop off and pick up zones have been introduced along the school's Iluka Road frontage and recently a similar zone was also added along the school's Eurobin Avenue frontage. The later was introduced to cater for parking issues associated with the existing school premises and NOT to support any expansion of the school. The restrictions also address on-going</p>

Internal Referral Body	Comments
	<p>resident concerns about drop off and pick up activity occurring across driveways to residences opposite the school on the northern side of Eurobin Avenue. The Eurobin Avenue drop off and pick up zone abuts an extended length of before and after school Bus Zone which extends over the remainder of the schools Eurobin Street frontage towards Collingwood Street.</p> <p>Given the above, it is evident that the school creates a significant drain on parking (approximately 117 spaces occupied throughout the day in the surrounding residential areas in addition to before and after school parking restrictions on the school's frontages). Any increase in student or staff population could not be supported without off-street parking on school premises to cater for that increase.</p> <p>For the above reasons the DA could only be supported on traffic grounds if it was conditioned that student numbers were to be capped at 1150 students and staffing numbers capped at 140 staff. As noted in a number of resident submissions it is also considered appropriate to impose a condition limiting the use of No.48 &amp; 50 as an educational establishment (school) to 2 years. This would ensure that any longer term establishment of school premises on the land was accompanied by a DA and appropriate consideration of parking and traffic impacts which have not been adequately addressed by the current temporary approval.</p> <p><i>*Planner Note - The restriction of the school use for 2 years is discussed elsewhere within this report and it is not considered to be a condition that could be reasonably imposed, given a school is a permitted use in the zone via the SEPP . It is noted that any increase to the school numbers must be sought via a DA, where Council's traffic team would consider this request. A condition will be included to state that no change to the student or staff numbers are granted via this DA. Therefore, the inclusion of these conditions are considered to address the traffic concerns.</i></p>

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 (Transport and Infrastructure) 2021**

#### **Chapter 2 - Infrastructure**

##### 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.

#### **Chapter 3 - Educational Establishments and child care facilities**

##### **Part 3.4 - SCHOOLS**

Part 3.4, Section 3.36 states that (1) "*Development for the purpose of a school may be carried out by any person with development consent on land in a prescribed zone*". The zone R1 General Residential is a 'prescribed zone' under the SEPP (T & I) 2022 and therefore development for the purpose of a school is permitted in the zone.

Part 3.4, Section 3.36 of Chapter 3 stipulates that:

*(6) Before determining a development application for development of a kind referred to in subclause (1), (3) or (5), the consent authority must take into consideration—*

- (a) the design quality of the development when evaluated in accordance with the design quality principles set out in Schedule 8, and*
- (b) whether the development enables the use of school facilities (including recreational facilities) to be shared with the community.*

The applicant has provided an analysis of the design principles within the statement of environmental effects.

In addition, the design quality principles are set out and addressed as follows by Council:

**Principle 1 – context, built form and landscape**

*Schools should be designed to respond to and enhance the positive qualities of their setting, landscape and heritage, including Aboriginal cultural heritage. The design and spatial organisation of buildings and the spaces between them should be informed by site conditions such as topography, orientation and climate.*

*Landscape should be integrated into the design of school developments to enhance on-site amenity, contribute to the streetscape and mitigate negative impacts on neighbouring sites.*

*School buildings and their grounds on land that is identified in or under a local environmental plan as a scenic protection area should be designed to recognise and protect the special visual qualities and natural environment of the area, and located and designed to minimise the development's visual impact on those qualities and that natural environment.*

Comment: The site is directly connected to the existing school site and therefore the proposal to expand the school onto the subject sites is a logical extension due to the physical connection between the sites. Whilst it is recognised that the to the north, west and south are residential dwellings a school is not considered to be out of place in an R1 Zone and a school being adjacent to residential dwelling is not an uncommon scenario. This is reflected by the fact schools are permitted in the residential zone by virtue of the SEPP.

The built form consisting of a temporary demountable structure is low scale and provides appropriate spatial separation to the residential boundaries that will be landscaped. Of importance, the structure will be temporary (and will be conditioned as such) and therefore any visual impact is only temporary, with the area proposed to be used as open space following the removal. Any future built form will be subject to a further approval via a development application or need to meet the requirements of the SEPP (Transport and Infrastructure) 2021. The site is not identified as 'Scenic Protection' under the Manly LEP 2013.

The landscape setbacks are of a reasonable dimension to soften the building as viewed from adjoining properties considering the low height of the building. The setbacks allow for the reasonable retention of solar access.

**Principle 2 – sustainable, efficient and durable**

*Good design combines positive environmental, social and economic outcomes. Schools and school buildings should be designed to minimise the consumption of energy, water and natural resources and reduce waste and encourage recycling.*

*Schools should be designed to be durable, resilient and adaptable, enabling them to evolve over time to meet future requirements.*

Comment: The proposal to use a pre-fabricated temporary structure to meet the needs of the school during construction works on the main campus minimises the consumption of energy given this structure can be re-used at a later date following removal. The applicant has investigated adaptive re-use of the existing dwellings on the site however they do not have sufficient capacity to accommodate the schools needs or are suitable with regard to disabled access.

**Principle 3 – accessible and inclusive**

*School buildings and their grounds should provide good wayfinding and be welcoming, accessible and inclusive to people with differing needs and capabilities.*

*Note. Wayfinding refers to information systems that guide people through a physical environment and enhance their understanding and experience of the space.*

*Schools should actively seek opportunities for their facilities to be shared with the community and cater for activities outside of school hours.*

Comment: Access pathways and ramps are used to access the demountable buildings to provide equitable access. Given the buildings are a temporary structure and there is limited ability to customise a demountable building, it would be unnecessary to require this building to be capable of catering to the wider community. The building serves a purpose of accommodating students during construction and there is ample opportunity within the existing school grounds to cater for activities for the wider community.

#### **Principle 4 – health and safety**

*Good school development optimises health, safety and security within its boundaries and the surrounding public domain, and balances this with the need to create a welcoming and accessible environment.*

Comment: The proposed fencing adequately defines the school grounds from the public domain, with the entrance identified by a gate at the site frontage. The use of this site to accommodate students during construction is optimal for student safety, with the alternative of walking students down the road to a separate campus a higher risk to student safety.

#### **Principle 5 – amenity**

*Schools should provide pleasant and engaging spaces that are accessible for a wide range of educational, informal and community activities, while also considering the amenity of adjacent development and the local neighbourhood.*

*Schools located near busy roads or near rail corridors should incorporate appropriate noise mitigation measures to ensure a high level of amenity for occupants.*

*Schools should include appropriate, efficient, stage and age appropriate indoor and outdoor learning and play spaces, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage and service areas.*

Comment: The demountable building is a low scale structure that mitigates overlooking and overshadowing for the adjoining sites. An acoustic report is provided to address both the demountable buildings and the use of the site following removal. Landscaping will be established around the perimeter of the building to assist in visual outlook to/from the building and compliment the landscape setting.

#### **Principle 6 – whole of life, flexible and adaptive**

*School design should consider future needs and take a whole-of-life-cycle approach underpinned by site wide strategic and spatial planning. Good design for schools should deliver high environmental performance, ease of adaptation and maximise multi-use facilities.*

Comment: The use of these two sites and demountable buildings will support the next stage of construction for the existing approval on the school site. Whilst the demountable buildings are fairly limited with regards to adaptability and use as a multi-use building, they are temporary in nature and

serve the immediate purpose of accommodating students during construction on the main campus. Following their removal, any future permanent building would need to address these principles and approval would be needed via a development application or via the SEPP (Transport and Infrastructure) 2021 which would both consider these design principles.

### **Principle 7 – aesthetics**

*School buildings and their landscape setting should be aesthetically pleasing by achieving a built form that has good proportions and a balanced composition of elements. Schools should respond to positive elements from the site and surrounding neighbourhood and have a positive impact on the quality and character of a neighbourhood.*

*The built form should respond to the existing or desired future context, particularly, positive elements from the site and surrounding neighbourhood, and have a positive impact on the quality and sense of identity of the neighbourhood.*

Comment: The proposed landscape buffer is of an appropriate height to soften the low scale form of the demountable building. The 3m setbacks to the adjoining residential boundaries are appropriate given the low scale height of the building and temporary nature. The conditions of consent require advanced species to be planted around the site perimeter to assist with landscape screening.

The front setback is appropriate having regard to the alignment of the existing school building to the east and the temporary nature of the building. It is noted that the site itself is not heritage listed or located within a heritage conservation area. Whilst a temporary demountable building does not directly respond to the heritage dwellings on the northern side of Eurobin Avenue, the building is not a permanent structure and is of a low scale.

In response to item (b):

*(b) whether the development enables the use of school facilities (including recreational facilities) to be shared with the community.*

Comment: Given the buildings are a temporary structure and there is limited ability to customise a demountable building, it would be unnecessary to require this building to be capable of catering to the wider community. The building serves a purpose of accommodating students during construction and there is ample opportunity within the existing school grounds to cater for activities for the wider community.

## **SEPP (Resilience and Hazards) 2021**

### **Chapter 2 – Coastal Management**

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

#### **Division 1 Coastal Wetlands and littoral rainforest area**

##### **2.7 Development on certain land within coastal wetlands and littoral rainforests area**

- 1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:
  - a) the clearing of native vegetation within the meaning of Part 5A of the Local Land

- Services Act 2013,
- b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
  - c) the carrying out of any of the following:
    - i) earthworks (including the depositing of material on land),
    - ii) constructing a levee,
    - iii) draining the land,
    - iv) environmental protection works,
  - d) any other development

Comment: Not within land containing coastal wetlands or littoral rainforest.

### **2.8 Development on land in proximity to coastal wetlands or littoral rainforest**

- 1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
  - a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
  - b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment: Not on land in proximity to coastal wetlands or littoral rainforest.

## **Division 2 Coastal Vulnerability Area**

### **2.9 Development on land within the coastal vulnerability area**

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
  - i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and
  - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment: Not within coastal vulnerability area.

## **Division 3 Coastal environment area**

### **2.10 Development on land within the coastal environment area**

- 1) Development consent must not be granted to development on land that is within the coastal

environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
- b) coastal environmental values and natural coastal processes,
- c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
- d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
- e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- f) Aboriginal cultural heritage, practices and places,
- g) the use of the surf zone.

Comment: The proposed development is not considered to give rise to adverse impacts on the matters listed a) to g) above, given the site is located within an existing residential context with no direct frontage to Manly Lagoon or the coastline.

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

Comment: The proposal has been designed to avoid impacts and conditions have been recommended with regard to erosion and sediment control and stormwater during and post development.

#### **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 platform for members of the public, including persons with a disability,
    - ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
    - iii) foreshores,
    - iv) 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 proposal due to its location and distance to the foreshore area will not result in impacts to the matters listed i) to v). The site is not identified as having aboriginal heritage. Built environment heritage is discussed elsewhere within this report. Council is satisfied that the development has been sited to avoid 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: There is no increase to coastal hazards as a result of this proposal.

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

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

Comment: There is no coastal management program applicable to this site.

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

#### **Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 requires the consent authority to consider whether land is contaminated.

In response to the above requirements of Chapter 4, the applicant has submitted a Preliminary Environmental Site Investigation dated 9 December 2022 and prepared by Reditus Consulting. In its conclusion, the investigation states:

- *Reditus considers that the Site is suitable for the proposed development. Additional sampling of soil beneath building footprints following the demolition of present residential dwellings of the Site is recommended. In addition to further site characterisation, further sampling will help inform the waste classification of soil material which is proposed for removal from the Site.*

Therefore, as the Investigation indicates that the site is suitable Council can be satisfied site contamination has been properly considered and investigated, with conditions recommended to address any unexpected finds beneath the existing dwelling footprints. The residential use of the

existing buildings and the conditions requiring further sampling and conditions for during demolition will ensure the use as temporary classrooms is satisfactory and the site is suitable for educational purposes.

### Manly Local Environmental Plan 2013

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	5m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1 (558.78m <sup>2</sup> )	FSR: 0.69:1 (644.77m <sup>2</sup> )	15%	No

### Compliance Assessment

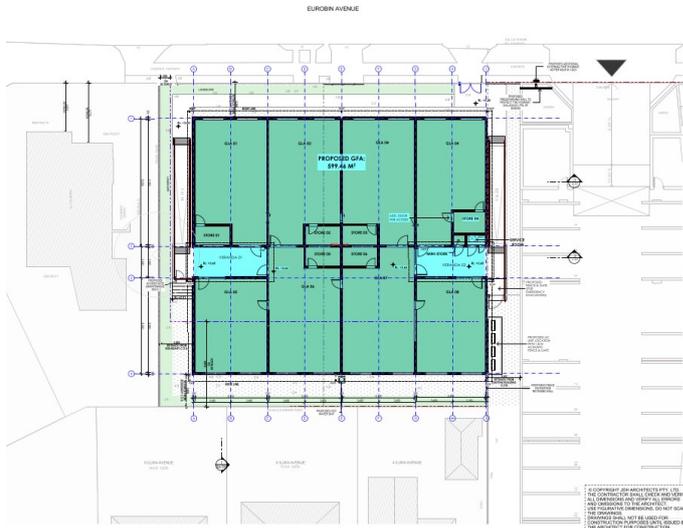
Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

### Detailed Assessment

#### 4.6 Exceptions to development standards

##### Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (558.78m <sup>2</sup> )
Proposed:	0.69:1 (644.77m <sup>2</sup> )
Percentage variation to requirement:	15%



**Image 1- FSR calculation**

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

- (1) The objectives of this clause are as follows:
- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

Clause 4.4 - Floor space ratio 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:

- *The proposed prefabricated single storey temporary building will house students during critical works on the Main Campus, being the demolition of the two storey Block G, and construction of the new Creative Arts Building*
- *The temporary demountable building which proposes eight (8) GLAs will temporarily replace the existing 10 + GLAs on the Main Campus located in the Block G to be demolished*
- *The proposed prefabricated temporary building on the New School Site will be in place for a period of 24 months (from date of issue of Occupation Certificate), minimising disruption to the College's current operations whilst these vital works are undertaken*
- *Following that the temporary demountable building will be removed from the New School Site and made good (open space turf). As such the contravention from the FSR standard is temporary*
- *The DA does not seek to increase the density of the combined Main Campus and New School Site, as there is no increase in student or staff population or change to the operating hours of the College*
- *There is no impact to current access, parking and traffic conditions as a result of the proposal*
- *The proposal maintains the pre-existing residential building pattern along Eurobin Avenue and presents a polite height, bulk and scale that sits comfortably within the existing and desired future character of the locality*
- *The proposed alterations and additions are compliant with the height standard, and the predominant front and side setbacks*
- *There are no unreasonable overshadowing impacts arising from the contravention*
- *There are no unreasonable privacy impacts arising from the contravention*
- *There are no public or private view impacts arising from the contravention*
- *There are no unreasonable noise impacts arising from the contravention*
- *The proposal is for a temporary building which will be removed from the site, as such any impacts arising from the proposal is transitory.*

Council Comment:

The points raised by the applicant as environmental planning grounds are generally agreed with, in particular that the exceedance of the FSR is being supported on a temporary basis, with removal of this particular structure after 24 Months (which will be conditioned). It is agreed that there are no unreasonable impacts with regards to overshadowing, views or privacy for the adjoining sites. There is a need for the relocation of the students during construction on the main campus and the relocation of students to a site directly adjoining the school is considered reasonable and the most feasible approach to dealing with construction. The applicant has outlined that other options have been explored with regards to student relocation, with the current proposal the optimal outcome for the school, whilst having a temporary exceedance of the FSR control.

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 Floor Space Ratio development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

*a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Comment:

The building provides 3m setbacks to each boundary which is capable of providing meaningful landscape planting to mitigate building bulk. The scale of the building is well below the LEP height limit of 8.5m and below that of the surrounding buildings. As such, the proposal is consistent with the street character.

*b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

Comment:

The proposal will not obscure any important landscape or townscape features, with the trees to be removed as part of the development exempt species under Council's DCP. Views of the surrounding heritage buildings will not be obscured due to the low scale height of the temporary demountable building.

*c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

Comment:

The proposal maintains an appropriate visual relationship by providing a minimum 3m setback to each boundary to be landscaped to compliment the landscape setting of the R1 Zone. There is limited ability to provide a façade that responds directly to the heritage buildings across the road due to the building being pre-fabricated and temporary in nature, however, the combination of the low height building and landscaping will assist screening of the building presentation to the street. Furthermore, given the building is temporary it will not have a long standing impact on the streetscape.

*d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

Comment:

The proposal has demonstrated there are no unreasonable privacy impacts and the window have been orientated towards the front boundary and rear boundary (with the level change to the rear and landscaping assisting with mitigating privacy). Reasonable solar access is maintained for the adjoining properties.

*e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Comment:

Not applicable to this development.

### **Zone objectives**

The underlying objectives of the R1 General Residential zone are:

- *To provide for the housing needs of the community.*

Comment: The use as a school is permitted with consent by virtue of the SEPP (Transport and Infrastructure) 2021 and therefore, is permissible in the R1 Zone. Given there are land uses permitted in the R1 Zone other than housing (e.g. child care, community centres) a development in the R1 Zone that does not provide additional housing is anticipated by the planning controls and is therefore not contrary to the zone objectives given it is a permissible land use. Therefore, this particular objective is not relevant to the proposed development.

- *To provide for a variety of housing types and densities*

Comment: N/A - See above.

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

Comment: It is clear that there are a high percentage of students who attend the school who reside in the area and in Manly and therefore, the school is a facility that provides a service to meet the needs of residents.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, 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 Floor space ratio Development Standard is assumed by the Local Planning Panel.

**5.21 Flood planning**

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

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

Comment: Council's flood team have reviewed the proposal with regard to flood risk, with their response contained earlier within this assessment report. The proposal has been found to incorporate measures to minimise the risk to life and evacuation during a flood event, including a flood risk management plan with the evacuation route proposed to be above the flood planning level. Council is satisfied the proposal will not adversely impact the flood behavior of the land to result in a detrimental impact on the adjoining properties. The proposal is compatible with the flood function and behavior of the land given the floor level being above the FPL and the ability to evacuate above the FPL. The height of the flood level is above the flood planning level of 3.64 AHD and this does not result in a building height that is excessive of impacts adjoining properties.

In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters:

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

Comment: Council's flood team have considered the following matters and for the reasons identified above, are satisfied the proposal has addressed matters (a) to (d).

## 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 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 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.

(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.

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 Stormwater management

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) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

Comment: The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, Council is satisfied that the design will maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water.

(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

Comment: OSD is not required for land within a flood zone.

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Comment: The proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to conditions. In this regard, Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

#### Manly Development Control Plan

##### Built Form Controls

Built Form Controls - Site Area: 931.3m <sup>2</sup>	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	NW: 6.5m (based on flat gradient)	2.6m to 3.5m	N/A	Yes
	SE: 6.5m (based on flat gradient)	2.6m to 3.5m	N/A	Yes
4.1.2.2 Number of Storeys	2	1	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line = 4.3m	3.25m	24%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	0.9m to 1.2m (based on wall height)	NW - 3m building	N/A	Yes

		(1.2m access ramp)	100%	No
		SE - Nil building		
	Windows: 3m	3m to rear	N/A	Yes
4.1.4.4 Rear Setbacks	8m	3m	62.5%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (512m <sup>2</sup> )	28% (263m <sup>2</sup> )	49%	No
4.1.5.2 Landscaped Area	Landscaped area 30% of open space (131.5m <sup>2</sup> )	69% (183.7m <sup>2</sup> )	N/A	Yes
	3 native trees	3 trees	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.3 Flood Prone Land	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

#### Detailed Assessment

#### **4.1.4 Setbacks (front, side and rear) and Building Separation**

##### Description of non-compliance

The DCP requires the following for front setbacks:

*"Street Front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity."*

The proposed development has a front setback of 3.25m to Eurobin Avenue. The adjoining school building has a setback of between 4m and 4.8m (to the east) and the adjoining residential dwelling a setback of between 4.6m and 5.7m (to the west). Therefore, the average street setback taking into account the adjoining buildings is 4.7m. When taking into account the dwellings in the R1 Zone (46,48 and 50 Eurobin) only, the street average is approximately 5m.

Given the building is 3.25m, it is forward of the prevailing average setback and is considered against the objectives of the control below in assessing the merits of the variation.

The DCP requires that an 8m rear setback is provided. The proposal provides a 3m rear setback, non-compliant with the control.

The building is situated with a nil setback to the north-eastern boundary adjoining the school site. However, it is noted that the applicant will seek to consolidate the proposed lots and this will be required as a condition.

##### Merit consideration:

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

*Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.*

##### Comment:

The proposed temporary building, being forward of the predominant setback, does not adhere maintaining the desired spatial proportions of the street. However, the following circumstances are noted:

- a) The building is a temporary structure and as such, will not be a fixture of the streetscape long term.

- b) The applicant has advised that the size of the building cannot be reduced any further given the number of students that need to be accommodated during construction on the main campus
- c) The adjoining buildings are two and three stories, with the proposed building being single storey and well below the LEP height limit. As such, the lower scale of the building assists mitigating visual impacts from the reduced street setback.

The proposal provides landscape planting within the 3.25m setback, with the exception of the access path that is required for disabled access into the building. The landscaping is proposed along the front boundary to consist of species with a mature height of between 2.5m and 4m, with Council's conditions requiring these to comprise of advanced species with a minimum 75 litre pot size.

The landscape planting along the street edge will assist complimenting the landscape character of the street and visually screen the building overtime. The requirement to plant advanced species from beginning of the project ensures that landscaping will make a difference from the outset.

Furthermore, a condition of consent is recommended to require a 5m deep soil zone to be established and maintained during operation of the school, following removal of the temporary demountable. This will ensure that the front setback of the temporary building will not be used as a precedent for any CDC issued under the SEPP T&I 2021, as a CDC cannot contravene a condition relating to landscaping.

*Objective 2) To ensure and enhance local amenity by:*

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment: The rear setback non-compliance is not considered to result in unreasonable overshadowing, with the adjoining property maintaining at least 4 hours solar access to their rear private open space. Privacy towards the rear boundary can be mitigated through the existing landscaping, existing boundary fencing and proposed landscaping which will mature in time.

*Objective 3) To promote flexibility in the siting of buildings.*

Comment: The application of the controls in a flexible way is reasonable given the structure is of temporary nature.

*Objective 4) To enhance and maintain natural features by:*

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment: Deep soil zones are provided around the perimeter of the site to accommodate landscaping

to compliment the R1 Zone. No significant (prescribed) locally native trees are proposed for removal, with all species exempt under the DCP. Although the front and rear setback is less than the DCP requirement, the non-compliances are only supported on the basis of the building being a temporary structure. The 3m setbacks containing landscape screening are sufficient for the temporary nature of the building.

*Objective 5) To assist in appropriate bush fire asset protection zones.*

Comment: Not applicable to this site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **4.1.5 Open Space and Landscaping**

##### Description of non-compliance

The DCP controls require 55% of the site to comprise of 'open space'. The proposal provides 28% of the site as open space, non-compliant with the control.

##### Merit consideration:

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

*Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.*

Comment: The site does not contain any particular important landscape features and the site is not identified as having high biodiversity value.

*Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.*

Comment: The area of soft landscaping around the perimeter of the site has been maximised to the extent possible having regard to the operational requirements of the school (noting 8 classrooms are required) and the need to provide an access pathway around the school for equitable access. Landscape screening has been provided within the remaining areas of the setbacks to maximise soft surfaces. No prescribed trees are proposed for removal (all trees removed are exempt under the DCP).

*Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.*

Comment: The adjoining properties will maintain solar access in accordance with the DCP and maintain reasonable privacy having regard to the existing fencing, landscaping and proposed landscaping. No view impacts arise from the proposal.

*Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.*

Comment: Council's engineers have reviewed the stormwater management for the site and are satisfied with the method of stormwater management. The temporary nature of the building is considered a factor in supporting the variation.

*Objective 5) To minimise the spread of weeds and the degradation of private and public open space.*

Comment: The proposal does not promote the spreading of weeds, with replacement species non-invasive.

*Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.*

Comment: The site is not within an identified wildlife corridor.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **4.1.10 Fencing**

A 1.8m fencing is proposed at the front boundary of the site. The fencing is an open style 'palisade fence' that will have landscaping behind to ensure the fencing is not too dominant on the streetscape. It is noted that the streetscape has a mixture of open and solid front boundary fences, with the fencing not inconsistent with what exists on the school at present. The 1.8m fence is required for security purposes given the proposed use as a school.

#### **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 \$28,282 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,828,205.

#### **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;

- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

## PLANNING CONCLUSION

This proposal, for 'Demolition work and change of use of site to an educational establishment (Stella Maris College) and installation of temporary demountable buildings' has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to receiving 29 submissions and a floor space ration exceedance of 15%,

The concerns raised in the objections have been addressed within this assessment report and conditions have been recommended where necessary.

The assessment issues relating to the built form non-compliances of floor space ratio, front setback, rear setback and open space are able to be supported on merit given that the demountable building is a temporary building, has a low scale and will not result in unreasonable adverse impacts to neighbouring properties.

The concerns in relation to the future use of the site and potential for additional school buildings to be pursued via either a development application or complying development is acknowledged, however would not warrant refusal of this application given that the *SEPP (T&I) 2021* overrides the local planning controls permits schools within the R1 Zone. Furthermore, the *SEPP (T&I) 2021* is a legitimate approval

pathway for the construction of school buildings if the criteria of the *SEPP (T&I) 2021* is met. This application does not seek to alter the operational aspects of the school in relation to the number of students or staff, traffic, hours or noise. Similarly, a complying development cannot alter these operational aspects, including contravening a condition in relation to landscaping, with a condition recommended to maintain a 5m landscape zone following removal of the temporary building to maintain the predominant street setbacks of the R1 Zone.

The concerns in relation to heritage have been addressed within this report. Of importance, the dwellings on 48 and 50 Eurobin are not heritage listed and are not within an identified heritage conservation area under the Manly LEP 2013 and therefore, their demolition would not be a reason to refuse the application. The demountable building has a low height and any impact upon the streetscape is considered to be temporary only given it will be removed after 2 years. As part of the proposal advanced landscape screening along the front boundary will be required.

On balance, the proposal can be supported given a school is a permitted use within the R1 Zone via the *SEPP (T&I) 2021* and any perceived visual impacts associated with the demountable buildings will be temporary (2 years). The proposal under this application is to use the site as open space associated with the school, however, the assessment of this application acknowledges that future development of the site may be available under either a DA or CDC. The possibility of future development via a legitimate approval pathways should not be a reason to refuse this application and would be inconsistent with the *SEPP (T&I) 2021* which overrides local planning controls.

Therefore, the application is recommended for approval to the NBLPP, subject to the conditions outlined at the end of this assessment report.  
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 permits a contravention of clause 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/0020 for Demolition work and change of use of site to an educational establishment (Stella Maris College) and installation of temporary demountable buildings. on land at Lot CP SP 12627, 50 Eurobin Avenue, MANLY, Lot 1 SP 12627, 1 / 50 Eurobin Avenue, MANLY, Lot 2 SP 12627, 2 / 50 Eurobin Avenue, MANLY, Lot 42 DP 14521, 48 Eurobin Avenue, MANLY, subject to the conditions printed below:

## Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

## GENERAL 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
DA-000 Rev D	19/12/2022	JDH Architects
DA-003 Rev C	19/12/2022	JDH Architecture
DA-004 Rev C	19/12/2022	JDH Architecture
DA-005 Rev C	19/12/2022	JDH Architecture
DA-101 Rev D	19/12/2022	JDH Architecture
DA-111 Rev I	26/04/2023	JDH Architecture
DA-702 Rev F	26/04/2023	JDH Architecture
DA-703 Rev F	26/04/2023	JDH Architecture
DA-704 Rev F	26/04/2023	JDH Architecture
DA-705 Rev F	26/04/2023	JDH Architecture
DA-112 - Rev C	19/12/2023	JDH Architecture
DA-401 Rev H	26/04/2023	JDH Architecture
DA-403 Rev H	26/04/2023	JDH Architecture
DA-410 Rev E	26/04/2023	JDH Architecture

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Stormwater Management Plan C-001 and C-002, Project NO. S220191	Undated	SCP Engineers

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Accessibility Assessment Report 220456	14/12/2022	Balckett Maguire Goldsmith
Building Code of Australia Report 22/0680	13/12/2022	Building Certifiers Australia
Hazardous Material Survey 22246 Ver 2	9/12/2022	Reditus Consulting Pty Ltd
Preliminary Site Investigation 22246 Ver 2	9/12/2022	Reditus Consulting Pty Ltd
Noise Impact Assessment, Project 210263, Rev D	03/04/2023	JHA Services
Civil Design Report S220191-CV-RP-01	14/04/2023	SCP 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:

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA-601 Rev C	19/12/2022	JDH Architecture
DA-602 Rev C	19/12/2022	JDH Architecture

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Preliminary Waste Management Classification 22246LR01-v2	9/12/2022	

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. **Removal of Temporary Demountable Buildings after 24 Months**

The temporary demountable buildings shall be removed from the land after 24 Months from the date of first occupation.

Following the removal of the buildings, the site shall be landscaped for use as open space with turf maintained over the whole area as shown on the plan DA\_005 Issue C dated 19/12/2022.

Reason: To ensure the buildings on the land are temporary (as proposed) and that the numerical non-compliances with the DCP and LEP are approved on a temporary basis only.

#### 4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$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.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolishedThe 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.

5. **No increased to staff and student numbers**

This development consent does not authorise any increase to the number of staff or students at the school. The number of staff and students associated with the school shall remain in accordance with application number 232/2014.

Any increase to the number of students is subject to a further development application with Council.

Reason: To ensure traffic impacts are maintained and maintain consistency with previous consent granted.

6. **Landscape zone following removal of the temporary building**

Following the removal of the temporary demountable building after 24 months, a 5m front setback landscape zone adjoining Eurobin Avenue shall be created, which shall consist of deep soil landscaping and shall be maintained as an ongoing operational deep soil landscape zone.

Reason: So that any temporary non-compliances regarding the landscape & streetscape character accepted due to the temporary nature of the proposal do not become permanent, and the landscaped residential character of the streetscape is reinstated after the temporary building has been removed.

## FEES / CHARGES / CONTRIBUTIONS

7. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$28,282.05 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 \$2,828,205.00.

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](http://www.northernbeaches.nsw.gov.au)).

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

### **BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

#### 9. **Flooding**

In order to protect property and occupants from flood risk the following is required:

##### Building Components and Structural Soundness – B1

All new development below the Flood Planning Level of 3.64m AHD shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

##### Building Components and Structural Soundness – B2

All new development must be designed to ensure structural integrity up to the Probable Maximum Flood of 5.62m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

##### Building Components and Structural Soundness – B3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 3.64m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

##### Floor Levels – C1

New floor levels within the development shall be set at or above the Flood Planning Level of 3.64m AHD.

#### Floor Levels – C3

The underfloor area of the dwelling below the 1% AEP flood level is to be designed to allow clear passage of floodwaters. At least 50% of the perimeter of the underfloor area must be of an open design from the natural ground level up to the 1% AEP flood level.

#### Flood Emergency Response – E2

The proposed shelter-in-place refuge must contain emergency power and a practical means of medical evacuation. The proposed evacuation route should be entirely above the flood planning level of 3.64m AHD.

#### Fencing – F1

New fencing (including pool fencing, boundary fencing, balcony balustrades and accessway balustrades) shall be open to allow for the unimpeded movement of flood waters. It must be designed with a minimum of 50% open area from the natural ground level up to the 1% AEP flood level. Openings should be a minimum of 75mm x 75mm.

#### Storage of Goods – G1

Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level of 3.64m AHD unless adequately protected from floodwaters in accordance with industry standards.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

#### 10. **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 kerb in Eurobin Avenue.

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.

#### 11. **Photographic Archival Record**

A photographic archival record of the site at 48 and 50 Eurobin Avenue, Manly is to be made of all existing buildings and structures (including interiors and exteriors and their setting), generally in accordance with the guidelines issued by the NSW Heritage Division of the Department of Planning and Environment.

This record must be submitted and approved by the Council's Heritage Advisor prior to the issue of a Construction Certificate and commencement of any demolition or works on-site.

The photographic record should be made using digital technology, submitted on archival quality CD-R disc, and should include:

- o Location of property, date of survey and author of survey;

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

Reason: To provide an archival photographic record of the site, including any buildings and landscape elements, prior to any works.

#### 12. **Access for People with Disabilities**

Access to and within the building is to be provided for Persons with a Disability. In this regard the Accessibility Assessment Report prepared by Blakett Maguire + Goldsmith dated 14/12/2022, Ref No. 220456 is to be taken into consideration as part of the assessment of the Construction Certificate.. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

#### 13. **Submission Roads Act Application for Civil Works in the Public Road**

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

The application is to include Civil Engineering plans for the design of the reinstatement of the existing driveway crossings to kerb and gutter, footpath and turf which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plans shall be prepared by a qualified civil engineer. The design must include the following information:

1. The kerb and gutter is to be in accordance with Council drawing No. 3 Concrete Kerb Details and Notes.
2. The footpath and turf are to be in accordance with Council drawing No. 4 Concrete Footpath Jointing Plans and Elevations.
3. The proposed stormwater outlets from the site to the kerb.

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

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

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

#### 14. **Detailed Site Investigation**

Prior to the issue of any Construction Certificate a Detailed Site Investigation is to be undertaken.

The report is to be prepared by, or reviewed and approved, by a certified consultant as defined under NSW EPA Contaminated Land Consultant Certification Policy.

The investigation is to be in accordance with relevant industry guidelines including State Environmental Planning Policy (Resilience and Hazards) 2021 compliance and NSW EPA guidelines.

Reason: Protection of the environment, State Environmental Planning Policy (Resilience and Hazards) 2021 compliance.

15. **Hazardous Building Materials Survey**

A hazardous building materials survey is to be conducted by a suitably qualified and experienced person. The survey is to include a survey of hazardous building materials including but not limited to asbestos, lead, SMF and PCBs. Following the survey a Hazardous Building Materials Register is to be prepared for the premises providing recommendations for the safe management/removal of hazardous building material.

Reasons: Public health.

16. **Noise Controls**

A suitably qualified person must be engaged to assess mechanical plant noise levels on nearby sensitive receivers once a preliminary design for the mechanical plant specifications of the development are available.

The report must also include potential noise emanating from amplified music or public address system installed on the premises and the noise from staff and students.

Reason: To reduce the noise nuisance to residents, and to assist in compliance with the Protection of the Environment Operations Act 1997 and Regulations.

17. **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 make appropriate provision for stormwater management and disposal arising from development, to ensure that the proposed works do not negatively impact receiving waters.

18. **Design Impact on Coastal Processes and Public/Private Amenity**

All development and/or activities must be designed and constructed so that they will not adversely impact on surrounding properties, coastal processes or the amenity of public foreshore lands.

Reason: To ensure the development does not negatively impact coastal processes and public/private amenity.

19. **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**

20. **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 and receiving waters from the effects of sedimentation and erosion from the site

**DURING BUILDING WORK**

21. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected including:
  - i) all trees and vegetation within the site not indicated for removal on the approved plans, excluding exempt trees and vegetation under the relevant planning instruments or legislation,
  - ii) all trees and vegetation located on adjoining properties,
  - iii) all road reserve trees and vegetation.
  
- b) Tree protection shall be undertaken as follows:
  - i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
  - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
  - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
  - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
  - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
  - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection

- measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,
  - viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
  - ix) 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 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.

The Principal Certifier must ensure that:

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

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

Reason: Tree and vegetation protection.

## 22. **Condition of Trees**

a) 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 with minimum AQF Level 5 in arboriculture during the works.

b) In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,

- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

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

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

Reason: Protection of trees.

23. **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.

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:

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

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

25. **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.

26. **Compliance with the Contamination Management Plan**

The requirements, suggestions, recommendations and conclusions of the of the Detailed Site Investigations are to be fully complied with.

Any RAP or Contamination Management Plan required by these reports 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.

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.

### BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

28. **Acoustic Design Recommendations**

Prior to the issuing of any Construction Certificate, documentation is to be submitted to the satisfaction of the Principal Certifier that design recommendations within the acoustic report have been implemented / incorporated into the design of the premises.

Reason: To prevent noise nuisance by using mitigation measures in design.

29. **Required Tree Planting**

Additional canopy trees rees shall be planted in accordance with the following:

- i) 2 trees selected from Manly Development Control Plan Schedule 4 - Part B - Native Tree Selection
- ii) All trees/palms as indicated on Landscape Plan dated 19/12/2022 prepared by JDH Architects
- iii) All trees are to be planted from stock a minimum 75 litre pot size

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

Reason: To maintain environmental amenity.

30. **Required Screen Planting**

Screen planting shall be planted in accordance with the following:

- a) All screen planting as indicated along the boundaries of the site as indicated on Landscape Plans dated 19/12/2022 prepared by JDH Architects;
- b) Plants are to be installed as advanced specimens at minimum 1 metre intervals and be of a minimum container size of 75 litre at planting in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch.

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

Reason: To maintain environmental amenity.

31. **Landscape Completion**

Planting is to be implemented in accordance with the approved Landscape Plan, inclusive of additional conditions of consent regarding planting.

Prior to the issue of any Occupation Certificate details (from a landscape architect or landscape designer) shall be submitted to the Principal Certifier certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

32. **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 Principal Certifier assessing the health and impact on all existing trees and vegetation required to be retained including the following information:

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

Reason: Tree protection.

33. **Building Components and Structural Soundness**

B2 - A suitably qualified structural engineer is to certify the structural integrity of the shelter in place up to the Probable Maximum Flood level of 5.65m AHD, and the remainder of the new development up to the Flood Planning Level of 3.65m AHD. The depth, velocity, debris load, wave action, buoyancy and immersion must all be considered.

B3 - A suitably qualified electrician or contractor is to certify that all new and existing electrical equipment, power points, wiring and connections are located above the Flood Planning Level of 3.65m AHD, are protected from flood water or have residual current devices installed to cut electricity supply during flood events.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

34. **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.

35. **Reinstatement of Kerb**

The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional

kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

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

36. **Positive Covenant for encapsulated contamination**

A covenant must be registered on the title of the land, giving notice of the former use, level of site contamination and its former location on the land.

A covenant must be registered on the title of the land binding the owners and future owners to be responsible for ongoing maintenance and any future rehabilitation works required in terms of the encapsulated materials, including the discharge or prevention of discharge there from of any contaminants or for any works required by Northern Beaches Council or any State or Federal Department/Authority.

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

Reason: Environmental Protection.

37. **Noise certification**

A report and certification prepared by an appropriately qualified or accredited person shall be submitted, assessing mechanical plant noise levels, PA systems, acoustic sound equipment, and use of the premises as a school by staff and students on nearby sensitive receivers. The report shall be provided to the Council / Accredited Certifier demonstrating compliance with all acoustic reports, requirements and the EPA Noise Policy for Industry prior to the occupation of the completed works.

Reason: To ensure that noise generated from the development does not result in offensive noise to any other party.

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

38. **Landscape Maintenance**

a) 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.

b) 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.

39. **Flood Management**

Storage of Goods (G1)

Hazardous or potentially polluting materials shall not be stored below the Flood Planning Level unless adequately protected from floodwaters in accordance with industry standards.

Flood Emergency Response (E1)

Appropriate access to the shelter in place refuge is to be maintained at all times from all areas within the development and it must contain as a minimum: sufficient clean water for all

occupants; portable radio with spare batteries; torch with spare batteries; and a first aid kit.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

40. **Compliance with Recommendations within Hazardous Building Materials Survey**  
Any recommendations within the Hazardous Building Materials Survey are to be followed during works.

Reason: To protect human health.

41. **Amenity**  
The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, ash, dust, waste water, waste products, grit, oil or other harmful products.

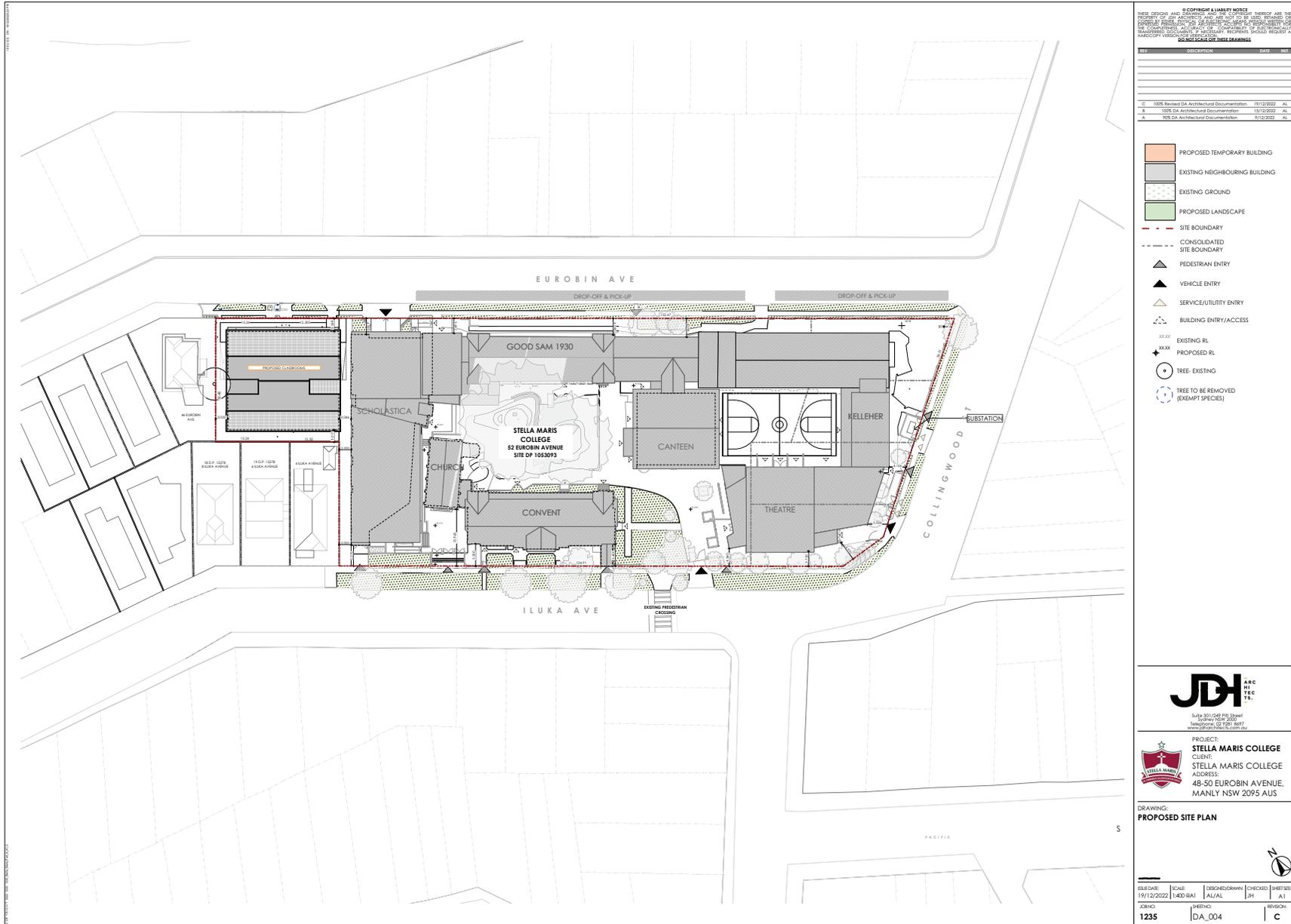
Reason: To ensure the surrounding area and people within the neighbourhood are not affected adversely and to ensure compliance with the Protection of the Environment Operations Act 1997.

42. **Noise Impact On Surrounding Area**  
The use of the premises shall not cause a sound level in excess of 5 dB(A) at any time above the background noise level at any point along the site boundaries when measured in accordance with the Environment Protection Authority's Noise Policy for Industry.

Reason: To ensure compliance with acceptable levels of noise established under best practice guidelines.

43. **Replacement of landscaping adjacent to Scholastica Building**  
Within three (6) months following the removal of the temporary demountable building the landscape planting along the western side of the Scholastica Building is to be reinstated in accordance with the approved landscape plan and relevant conditions as required by DA 2014/232.

Reason: To ensure the landscaping outcomes for the existing school development are maintained.









**Clause 4.6 Written Request to contravene Manly LEP 2013,  
clause 4.4 - FSR**

48 and 50 Eurobin Avenue, Manly



**Clause 4.6 Written Request submitted to  
Northern Beaches Council**

Prepared on behalf of Stella Maris College  
26 April 2023 I 22004

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## 1.0 Preliminaries

### 1.1 Land to which this variation applies and overview of the proposal

This exception to development standards Written Request supports a Development Application (DA) relating to Stella Maris College (the **College**), an independent secondary school for girls that is owned and governed by the Good Samaritan Education (GSE).

The College is located across two separate sites, the Main Campus at 52 Eurobin Avenue, Manly and the smaller Benedict Campus located at 270 Pittwater Road, Manly. The DA the subject of this Written Request relates to 48 and 50 Eurobin Avenue, Manly (the **New School Site**) which adjoins the Main Campus to the west.

The DA proposes to change the use of the New School Site from residential to an *educational establishment/school* (to be used in connection with Stella Maris, College) and installation of a prefabricated single storey temporary demountable building. After a period of 24 months the temporary demountable building will be removed and the New School Site will be made good (open space turf).

This Written Request has been prepared by Robinson Urban Planning Pty Ltd (RUP). It should be read in conjunction with the Statement of Environmental Effects (SEE) that accompanies the DA.

### 1.2 Relevant environmental planning instrument

This exception to development standards Written Request relates to Manly Local Environmental Plan 2013 (**Manly LEP 2013**).

### 1.3 Relevant development standard

This exception to development standards Written Request relates to the floor space ratio (FSR) development standard at clause 4.4 of Manly LEP 2013 which states that the maximum FSR for the New School Site is 0.6:1 (which represents a *gross floor area (GFA)* of 558.78m<sup>2</sup> on the New School Site which has an area of 931.3m<sup>2</sup>).

### 1.4 Proposed contravention of to the standard

As calculated by JDH Architects, the proposed single storey prefabricated temporary demountable building, which will be in place for a period of 24 months, has a GFA of 599.46m<sup>2</sup> which equates to an FSR of 0.64:1 on the New School Site. If you include the veranda entrances in the calculation the proposal has a GFA of 644.7m<sup>2</sup> which equates to an FSR of 0.69:1 on the New School Site.

The proposal contravenes the 0.6:1 FSR standard by 40.68m<sup>2</sup> on the New School Site (or 85.92m<sup>2</sup> if the veranda entrances are included). Which represents a temporary contravention of 0.04:1 or 7% on the New School Site (or 0.09:1 or 15% when the veranda entrances are included).

The GFA/FSR as permitted by the FSR standard and proposed on the New School Site is summarised in **Table 1**.

**Table 1 – GFA/FSR permitted by Manly LEP 2013 and proposed<sup>^</sup>**

Site Area: 931.3m <sup>2</sup>	Proposal on the New School Site	Manly LEP 2013 clause 4.4	Contravention
GFA (m <sup>2</sup> )	599.46	558.78	40.68
FSR	0.64	0.60:1	0.04:1
%			7%

<sup>^</sup> Based on Drawing DA\_706 Rev D by JDH Architects

**Table 2 – GFA/FSR permitted by Manly LEP 2013 and proposed with veranda areas included<sup>^</sup>**

Site Area: 931.3m <sup>2</sup>	Proposal on the New School Site	Manly LEP 2013 clause 4.4	Contravention
GFA (m <sup>2</sup> )	644.77	558.78	85.92
FSR	0.69	0.60:1	0.09:1
%			15%

<sup>^</sup> Based on Drawing DA\_706 Rev D by JDH Architects

### 1.5 Project need

The proposed prefabricated single storey temporary building will house students during critical works on the Main Campus, being the demolition of the two storey Block G and construction of the new Creative Arts Building.

The proposed temporary demountable building which proposes eight (8) general learning areas (GLAs) will replace the existing 11 GLAs in Block G.

The proposed prefabricated temporary building on the New School Site will be in place for a period 24 months. Following that, the temporary demountable building will be removed from the New School Site and the land will be made good (open space turf).

The New School Site was acquired by the College to provide temporary accommodation for students during the construction period as the Main Campus has no capacity to accommodate GLAs during this time.

It is noted that should the New School Site be granted approval for an *educational establishment/school* change of use, temporary demountable buildings could be installed under the relevant provisions of *State Environmental Planning Policy (Transport and Infrastructure 2021 (Transport and Infrastructure SEPP))* as either exempt development, development permitted without consent, or alternatively a complying development (one and two storey forms for a period of 48 months). Using these planning pathways, there is no FSR development standard.

In this instance, the temporary demountable could not comply with all of the relevant setback standards (as a minimum of eight (8) GLAs were required by the College in a single storey form to avoid the costly requirement to install a lift).

As such the exempt, development permitted without consent and complying development provisions were not available and a DA is required for the temporary demountable building.

## 2.0 Justification for the exception and matters for consideration

### 2.1 Clause 4.6

Clause 4.6 of Manly LEP 2013 states:

#### 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.*
- (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....*

### 2.2 Land and Environment Court tests

This section of the Written Request assesses the proposed contravention of the FSR standard against the cl. 4.6 considerations using the accepted tests for the assessment of development standard variations established by the NSW Land and Environment Court in:

- *Initial Action v Woollahra Municipal Council [2018] NSWLEC 118*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 and Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 ('Four2Five No 3')*
- *Wehbe v Pittwater Council [2007] NSW LEC 82*
- *Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46.*

### 2.3 Clause 4.6(3)

The applicant bears the onus to demonstrate that the matters in cl. 4.6(3) have been adequately addressed by the Written Request in order to enable the consent authority to form the requisite opinion of satisfaction. The applicant's Written Request seeking to justify the contravention of the development standard must adequately address both:

- That compliance with the development standard is **unreasonable or unnecessary** in the circumstances of the case (cl 4.6(3)(a)); and
- That there are **sufficient environmental planning grounds** to justify contravening the development standard (cl 4.6(3)(b)).

The following sections justify contravention of the FSR development standard using these tests.

#### 2.3.1 Clause 4.6(3)(a) (Whether compliance with the development standard is unreasonable or unnecessary)

The common ways in which an applicant might demonstrate that compliance with a development standard is **unreasonable or unnecessary** are summarised by Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446. Although *Wehbe* concerned a SEPP 1 objection, the common ways to demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe* are equally applicable to cl 4.6. The five ways to demonstrate that compliance is unreasonable/unnecessary are not exhaustive, and it may be sufficient to establish only one way.

The five ways to demonstrate that compliance with the standard is unreasonable or unnecessary and the relevance to this Written Request are noted below:

#### 1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard*

The objectives of the FSR standard (Manly LEP 2013 cl. 4.4(1)) are satisfied as noted below:

##### *(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character*

The proposed demolition of the existing single storey dwelling, two storey duplex and associated structures on the New School Site and proposed single storey prefabricated temporary demountable building are consistent with the existing and desired streetscape character for the following reasons:

- The temporary building is a single storey structure with a maximum height of approximately 5m, which is consistent with the one and two storey residential built form in the surrounding area
- Neutral materials and finishes are proposed so the temporary building will sit comfortably within the streetscape
- Suitable supplementary planting is proposed to the front and side boundaries (north and west) with existing vegetation maintained along the rear boundary (south) to preserve the character of the site and surrounding area
- New fencing is proposed to Eurobin Avenue to match the existing fencing on the Main Campus, presenting as a seamless extension to the existing College grounds
- The proposal complies with the front and side setback controls for residential development, as such the location and position of the temporary building is consistent with the residential built form in the surrounding area

- The temporary building will only be in place for a period of 24 months, following that the site will be made good (open space turf).

*(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features*

Like existing dwellings within the street, the proposed temporary building is single storey. It therefore respects the bulk and scale of adjoining development. The proposal is well below the permitted 8.5m building height standard that applies to the site (5m proposed), as such the proposal will not adversely affect any public or private views or obscure any important landscape or townscape features.

*(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area*

A good standard of design is proposed, consistent with existing residential development in the area. New fencing is proposed to Eurobin Avenue to match existing fencing on the Main Campus, presenting as a seamless extension to the existing College grounds. The proposal therefore retains the existing and desired future character of the area.

*(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

An assessment of the environmental effects of the proposal for neighbouring properties and public spaces follows:

**Overshadowing**

Shadow diagrams for midwinter have been prepared by JDH Architects.

A summary of the proposal's solar impacts is outlined below:

- The proposal will create a small amount of temporary additional overshadowing to the rear private open space of properties to the south of the New School Site (at 4, 6 and 8 Iluka Avenue) from 9.00 am to 12.00 midday
- From 12.00 midday onwards, the proposal will not create any additional overshadowing to any neighbouring property
- At no time is the public domain impacted by the proposal by way of solar access impacts.

The proposal complies with the relevant solar access provisions of Manly DCP 2013 as follows:

- Due to the location and orientation of the site, the proposal does not reduce solar access to more than one third of the existing sunlight access of the adjacent properties, consistent with Section 3.4.1.1 of Manly DCP 2013
- The proposal complies with Section 3.4.1.2 of Manly DCP 2013 which requires solar access to windows of living rooms to adjacent buildings to be maintained for at least 2 hours between 9.00 am and 3.00 pm. The proposal will not impact any north facing windows.

The proposal also complies with Section 3.40(5) and Schedule 6 Overshadowing Standard of the Transport and Infrastructure SEPP which states that to be complying development, a new building or an alteration or addition to an existing building must not overshadow any adjoining residential accommodation so that solar access to any habitable room or principal private open space on the adjoining property is reduced to

less than 3 hours between 9:00 am and 3:00 pm at the winter solstice, or is reduced in any manner if solar access to any habitable room on the adjoining property is already less than 3 hours. This complying development standard provides a useful guide for the proposal.

#### Visual Privacy

The proposed change of use to *educational establishment/school* and associated works does not give rise to any privacy issues as:

- The proposed new temporary building is single storey, with limited openings proposed to the west and south elevations
- Existing boundary fencing is to be retained to the west and to south of the New School Site along with additional supplementary planting, which will protect the privacy of the adjacent occupants of the residential dwellings
- School uses (existing) adjoin the New School Site to the east, being the Main Campus and three storey Scholastica Building
- No change is proposed to the student and staff population of the College and the use of the New School Site and Main Campus will operate during standard school hours with students supervised by school staff at all times.

#### Acoustic privacy

A Noise Assessment has been carried out by JHA Acoustics which concludes that the noise impacts of the proposal will be reasonable.

#### Views

The proposed temporary building is single storey with a flat roof. As such, it will not adversely affect any public or private views.

#### Heritage

The proposed change of use and new temporary demountable building will not detrimentally impact the nearby heritage items being the Convent Building and two figs located on the Main Campus, given the distance and intervening buildings.

*(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

N/A

As the proposal satisfies the FSR development standard objectives, compliance with the standard in this instance is unnecessary and unreasonable.

**2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary**

Not applicable. The underlying objective or purpose of the FSR standard is relevant to the development and is achieved as outlined above.

**3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable**

Not applicable. The underlying object or purpose of the FSR standard would not be defeated or thwarted if compliance was required.

**4. 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**

Not applicable. The FSR standard has not been abandoned by the granting of consents by Council.

**5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.**

Not applicable. The zoning of the land is reasonable and appropriate.

**2.3.2 Clause 4.6(3)(b) (Whether there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b))**

"Sufficient environmental planning grounds" is a phrase of wide generality (*Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 [26]):

*Subclause (3)(b) requires a written report to demonstrate that sufficient environmental planning grounds support the contravention of a development standard. The EPA Act or the LEP do not define "sufficient" or "environmental planning grounds". As the Appellant submitted these phrases are of wide generality enabling a variety of circumstances or grounds to justify contravention of the particular development standard. The "sufficient ... grounds" must be "environmental planning grounds" by their nature. The word "environment" is defined in the EPA Act to mean "includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings".*

The environmental planning grounds relied on in the Written Request under cl. 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole.

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 [24].

Four2Five [31]:

*Further support for the Commissioner's approach is derived from the use of the word "sufficient". Contrary to the Appellant's submission that this suggests a low bar, I draw the opposite inference, namely that the written report must address sufficient environmental planning grounds to inform the consent authorities finding of satisfaction in cl 4.6(4)(a)(i).*

Using these tests, there are **sufficient environmental planning grounds** to vary the FSR development standard in this instance given that:

- The proposed prefabricated single storey temporary building will house students during critical works on the Main Campus, being the demolition of the two storey Block G, and construction of the new Creative Arts Building
- The temporary demountable building which proposes eight (8) GLAs will temporarily replace the existing 10 + GLAs on the Main Campus located in the Block G to be demolished
- The proposed prefabricated temporary building on the New School Site will be in place for a period of 24 months (from date of issue of Occupation Certificate), minimising disruption to the College's current operations whilst these vital works are undertaken

- Following that the temporary demountable building will be removed from the New School Site and made good (open space turf). As such the contravention from the FSR standard is temporary
- The DA does not seek to increase the density of the combined Main Campus and New School Site, as there is no increase in student or staff population or change to the operating hours of the College
- There is no impact to current access, parking and traffic conditions as a result of the proposal
- The proposal maintains the pre-existing residential building pattern along Eurobin Avenue and presents a polite height, bulk and scale that sits comfortably within the existing and desired future character of the locality
- The proposed alterations and additions are compliant with the height standard, and the predominant front and side setbacks
- There are no unreasonable overshadowing impacts arising from the contravention
- There are no unreasonable privacy impacts arising from the contravention
- There are no public or private view impacts arising from the contravention
- There are no unreasonable noise impacts arising from the contravention
- The proposal is for a temporary building which will be removed from the site, as such any impacts arising from the proposal is transitory.

#### 2.4 Clause 4.6(4)(a)

Clause 4.6(4)(a) establishes preconditions that must be satisfied before a consent authority (or the court exercising the functions of a consent authority) can exercise the power to grant development consent.

The first opinion of satisfaction in cl 4.6(4)(a)(i) is that the Written Request has addressed subclause (3). As demonstrated above at Section 2.3, the Written Request has addressed both parts of cl. 4.6(3). Demonstrating:

- That compliance with the FSR standard is unreasonable and unnecessary; and
- That there are sufficient environmental planning grounds to justify contravening the development standard.

The second opinion of satisfaction in cl 4.6(4)(a)(ii) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard that is contravened and the zone objectives. The consent authority must be satisfied that the development is in the public interest because it is consistent with these objectives, not simply that the development is in the public interest.

The consistency of the development with the objectives of the FSR development standard is addressed above at Section 2.3.1.

The consistency of the development with the objectives of Zone R1 – General Residential is noted below, demonstrating that the development is in the public interest

- *To provide for the housing needs of the community*  
N/A
- *To provide for a variety of housing types and densities*  
N/A
- *To enable other land uses that provide facilities for services to meet the day to day needs of residents*

The proposed change of use of the New School Site to an *educational establishment/school* to be used in association with Stella Maris College will provide educational services to meet the day to day need of residents.

The proposed prefabricated temporary building will house students during works on the Main Campus, being the construction of the new Creative Arts Building. The temporary demountable building will replace existing GLAs on the Main Campus during this period (being approximately 24 months), minimising disruption to the College's current operations whilst these vital works are undertaken. Following that the temporary demountable building will be removed from the New School site and made good (open space turf).

The proposed development will be in the public interest because it is consistent with both the objectives of the FSR standard and the objectives for development within the zone.

#### 2.5 Clause 4.6(4)(b) (Concurrence of the Secretary of the Department of Planning, Industry and Environment)

The Secretary has granted concurrence to Northern Beaches Council.

### 3.0 Conclusion

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The proposed change of use to the New School Site to an *educational establishment/school* (to be used in connection with Stella Maris College) and installation of a new temporary demountable building, with an FSR of 0.64:1 (599.46m<sup>2</sup>) represents a temporary contravention of 40.68m<sup>2</sup> (7%) from the FSR standard of 0.60:1. If the veranda entrances are included in the calculation, the proposed FSR is 0.69:1 (644.7m<sup>2</sup>) which represents a temporary contravention of 85.92m<sup>2</sup> (15%) from the FSR standard of 0.6:1.

Consistent with the tests established by the Land and Environment Court, this cl. 4.6 Written Request to contravene the FSR standard demonstrates that:

- Compliance with the development standard is unreasonable and unnecessary;
- There are sufficient environmental planning grounds to justify contravening the development standard; and
- The proposed development will be in public interest because it is consistent with the objectives of the FSR development standard and the zone objectives.

**ITEM 4.2**

**DA2022/1869 - 4-6 NIANGALA CLOSE, BELROSE - ALTERATIONS AND ADDITIONS TO BELROSE SUPER CENTRE INCLUDING SIX (6) NEW TENANCIES FOR USE AS SPECIALISED RETAIL PREMISES AND RECONFIGURATION OF THE EXISTING CAR PARK.**

**AUTHORISING MANAGER** Steve Findlay  
**TRIM FILE REF** 2023/428037  
**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.

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2022/1869 for the Alterations and additions to Belrose Super Centre including six (6) new tenancies for use as specialized retail premises and reconfiguration of the existing car park on land at Lot 1 DP 1104786,4 - 6 Niangala Close, BELROSE, for the reasons for refusal set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/1869
<b>Responsible Officer:</b>	Adam Croft
<b>Land to be developed (Address):</b>	Lot 1 DP 1104786, 4 - 6 Niangala Close BELROSE NSW 2085
<b>Proposed Development:</b>	Alterations and additions to Belrose Super Centre including six (6) new tenancies for use as specialised retail premises and reconfiguration of the existing car park
<b>Zoning:</b>	Warringah LEP2011 - Land zoned E3 Productivity Support OLDWarringah LEP2011 - Land zoned B7 Business Park Warringah LEP2011 - Land zoned C2 Environmental Conservation WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
<b>Development Permissible:</b>	Yes, under WLEP Schedule 1 Additional Permitted Uses
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Equity Trustees Limited
<b>Applicant:</b>	Home Consortium Limited
<b>Application Lodged:</b>	17/11/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	24/11/2022 to 08/12/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 103.36%
<b>Recommendation:</b>	Refusal
<b>Estimated Cost of Works:</b>	\$ 3,369,934.00

### EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to the existing bulky goods retail centre (HomeCo Belrose).

Broadly, the proposed works encompass a 1,468m<sup>2</sup> addition at Level 2 of the building, the reconfiguration of the existing layout to provide a total of six (6) tenancies at that level and 2 x new signage zones.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as it seeks a variation to the height of buildings development standard that exceeds 10%, and relates to a Class 2-9

building.

In response to the notification of the application, Council received one (1) submission in relation to the proposal. The concerns raised are address in detail under the Submissions section of this report.

The proposal seeks a variation of up to 106.36% to the height of buildings development standard. The Applicant's written Clause 4.6 request does not adequately demonstrate that the proposal achieves the underlying objectives of the development standard, nor does it adequately establish that compliance with standard is unreasonable or unnecessary, or that there are sufficient environmental planning grounds to justify the extent of the proposed variations sought.

Based on the extent of the variation sought and the volume of existing and proposed building in exceedance of the height control, it is considered that the development is excessive in height, bulk and scale and would be incompatible with the desired future character of the locality. In view of the building height variation, the existing site coverage non-compliance (18.6%) and the existing and proposed setback non-compliances (to two of the three site frontages), the proposal represents an overdevelopment of the site.

Despite the existing non-compliant nature of the building, the existing stepping of the built form from north to south and toward the most visually prominent part of the site (Garigal Road and corner of Forest Way), is a good urban design characteristic of the current development, and to lose this critical character attribute and design quality will be detrimental to the streetscape and deleterious to the broader objective of ensuring a high quality business park environment.

Based on the detailed assessment contained in this report, the application is **not supported** and is recommended that the NBLPP refuse the application for the reasons provided.

## PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks consent for alterations and additions to the existing bulky goods retail centre. Specifically, the proposal involves a 1468m<sup>2</sup> addition at level 2 (roof level) of the existing building.

It is proposed to configure level 2 of the building into 6 tenancies ranging from 42m<sup>2</sup> to 1700m<sup>2</sup>, for use as specialised retail premises. Two new signage zones are also proposed at the south-eastern corner of the building.

### Car parking

The proposal necessitates the removal of 66 car parking spaces at level 2, resulting in a total of 974 car parking spaces within the development.

### Hours of Operation

The application does not specify the proposed hours of operation, but states that they are intended to be consistent with the existing operating hours of the centre.

For the avoidance of doubt, the 6 proposed tenancies at level 2 of the centre would be subject to the following hours of operation (consistent with existing consents on the site) were the application recommended for approval:

- Monday to Wednesday - 9.00am - 5.30pm
- Thursday - 9.00am - 9.00pm
- Friday - 9.00am - 5.30pm
- Saturday - 9.00am - 5.00pm
- Sunday and Public Holidays - 10.00am - 5.00pm

### Amendments to Proposal

Following lodgement, the following amendments were made to the proposal:

- Deletion of 2.4m eastern eave overhang
- 470mm reduction in the overall building height
- Addition of planter boxes at south-eastern corner of level 2
- Relocation of signage zones at south-eastern corner from level 2 to level 1
- Revised configuration of new level 2 tenancies
- While not clearly annotated on the amended plan set, it is understood that there is an approximate 1m reduction in the length of the addition at the western elevation

The proposed amendments are considered to result in a reduction in environmental impact and were not publicly re-notified, in accordance with the Northern Beaches Community Participation Plan.

### **ASSESSMENT INTRODUCTION**

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

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

### **SUMMARY OF ASSESSMENT ISSUES**

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
Warringah Local Environmental Plan 2011 - 2.5 Additional permitted uses for particular land  
Warringah Local Environmental Plan 2011 - Zone B7 Business Park  
Warringah Local Environmental Plan 2011 - Zone C2 Environmental Conservation  
Warringah Local Environmental Plan 2011 - 6.2 Earthworks  
Warringah Development Control Plan - B4 Site Coverage  
Warringah Development Control Plan - B7 Front Boundary Setbacks  
Warringah Development Control Plan - B14 Main Roads Setback  
Warringah Development Control Plan - C2 Traffic, Access and Safety  
Warringah Development Control Plan - C4 Stormwater  
Warringah Development Control Plan - D3 Noise  
Warringah Development Control Plan - D6 Access to Sunlight  
Warringah Development Control Plan - D7 Views  
Warringah Development Control Plan - D9 Building Bulk

Warringah Development Control Plan - D10 Building Colours and Materials  
 Warringah Development Control Plan - D12 Glare and Reflection  
 Warringah Development Control Plan - D23 Signs  
 Warringah Development Control Plan - E1 Preservation of Trees or Bushland Vegetation  
 Warringah Development Control Plan - E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat  
 Warringah Development Control Plan - E10 Landslip Risk

#### SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 1104786 , 4 - 6 Niangala Close BELROSE NSW 2085
<b>Detailed Site Description:</b>	<p>The subject site consists of a single allotment bounded by Niangala Close to the west, Mona Vale Road to the north, Forest Way to the east and Garigal Road to the south. The site has a surveyed area of 4.023ha.</p> <p>The site is located within the E3 Productivity Support zone and accommodates a bulk good premises comprising 36,500m<sup>2</sup> of gross floor area.</p> <p>The site is also zoned C2 Environmental Conservation. This zoning applies to a portion of land around the perimeter of the site along the street frontages to Forest Way and Monda Vale Road.</p> <p>Surrounding development consists of a mix of light industrial and commercial premises.</p> <p>The topography of the site is characterised by a cross fall towards the south western corner.</p> <p>The site is bushfire prone and classified as Landslip Risk Class A and B on Council's Landslip Risk Map.</p>

Map:



## SITE HISTORY

### DA2001/1615

The existing development was approved under Development Consent No. DA2001/1615 on 11 May 2004 for the construction of a bulky goods retail outlet, shops, restaurants, conservation of bushland and associated parking.

### 2001/1615 - Mod 1

On 27 February 2006, Council granted modified consent (2001/1615Mod 1) to provide an additional 124 car parking spaces on the rooftop, ramping, lighting and an increase to the parapet.

### 2001/1615 - Mod 2

On 26 September 2006, Council granted modified consent (2001/1615Mod 2) for the provision of a stairway linking the lower and upper level rooftop carparking areas.

### MOD2009/0030 - Mod 3

On 18 February 2010, Council granted consent (MOD2009/0030) to modify condition No. 39 of consent 2001/1615 to increase the gross floor area of the shops component of the Development from 1,000m<sup>2</sup> to 2,500m<sup>2</sup>.

Condition 39 stated:

*39. The gross floor space of shops and restaurants in the development shall not exceed 2500 square metres for shops and 302 square metres for restaurants.*

Condition Nos. 41A and 41B were added to the Consent by MOD2009/0030 as a result of an Economic Impact Assessment provided by Hill PDA dated 7 January 2010.

Condition No. 41A stated:

*41A. Retailing of clothing or apparel*

*This consent does not authorise the use of any shop whose primary purpose is for the retailing of clothing or apparel.*

*Reason: To maintain the use of the centre for retailing of bulky goods.*

Condition No. 41B stated:

*41B. Size of the individual shops*

*This consent does not authorise any individual shop to exceed 400 square metres of gross floor space.*

*Reason: To prevent the creation of mini major retailers*

**MOD2010/0178 (Modification 4)**

*On 4 November 2010, Council granted consent (MOD2010/0178) to modify Condition No. 39 to become Condition No. 39A and to delete Condition Nos. 41A and 41B.*

*Condition No. 39A states:*

*39A. Notwithstanding Condition 41 [see note below] the following restrictions also apply to the gross floor*

*space of shops:*

*a) 1,000 square metres of shops may be utilised for general retailing.*

*b) 1,500 square metres of shops is subject to the following restrictions:*

*i. This consent does not authorise the use of the additional 1,500 square metres for shops whose primary purpose is for the retailing of clothing or apparel.*

*ii. This consent does not authorise any individual shop to exceed 400 square metres of gross floor space.*

Note: Condition No. 41 states:

*41. This consent does not authorise the use of any shop for the purposes of a supermarket or other similar food sales outlet.*

**DA2014/1369**

On 1 July 2015, DA2014/1369 for alterations and additions including addition of a store room at Level 1, 2290m<sup>2</sup> of retail floor space, corridor, plant room and goods lift at Level 2 was approved by Council subject to conditions.

**DA2018/1254**

On 26 July 2018, DA2018/1254 for alterations and additions to the existing Level 2 of the bulky goods retail centre was approved by Council subject to conditions.

**DA2022/1869 - Current Application Under Assessment**

(**Preface** - No Pre-lodgement meeting (PLM) was held with Council in relation to this proposal, despite the complex history of development on this site and the significant additional non-compliance with the building height development standard under WLEP 2011)

On 17 November 2022, DA2022/1869 was lodged.

On 28 February 2023, Council wrote to the Applicant via a *Request for Information* (RFI) outlining concerns, and that the application was not supported in relation to:

- Proposed building height breach, the resulting visual impact and the inadequacy of the

- submitted Clause 4.6 Variation; and
- Inadequate section plans and shadow diagrams.

The Applicant elected not to withdraw the application and respond by submitting additional information.

On 2 March 2023, Council wrote to the Applicant to request the following additional information:

- A Visual Impact Analysis (VIA) demonstrating the impact of the proposed development as viewed from the surrounding public domain; and
- An amended/additional Traffic and Parking Report in response to concerns raised by Council's Traffic Section.

On 11 April 2023, the Applicant submitted the VIA and amended Clause 4.6 Variation Statement, which was reviewed.

On 17 April 2023, Council wrote to the Applicant reiterating the concerns in relation to the building height breach, visual impact and adequacy of the submitted Clause 4.6 written request. The following information was requested to enable a complete assessment of the application:

- Amended architectural plans;
- Revised VIA reflecting the amended design;
- Amended Clause 4.6 written request in support of the application;
- Section plans and amended shadow diagrams; and
- Economic Impact Assessment (EIA)

On 17 April 2023, the Applicant submitted an amended Traffic and Parking Report and on 19 May 2023, the Applicant submitted an EIA and amended architectural plans. The amendments made to the architectural plans are summarised in the Detailed Description section of this report. No amended Clause 4.6 written request or revised VIA were submitted in support of the amended design.

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

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

<b>Section 4.15 Matters for Consideration</b>	<b>Comments</b>
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.  The NSW employment zones reforms have been made and came into force on 26 April 2023. These reforms will result in this property changing from a B7 zone to an E3 zone. The proposed use of the site remains permissible pursuant to the additional permitted uses applicable to the site under Clause 2.5 and Schedule 1 of the WLEP.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters are capable of being address by a condition of consent, should the application be recommended for approval.</p> <p><u>Clause 29</u> of the EP&amp;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&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the matters detailed in the Site History section of this report.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter would be addressed via a condition of consent were the application recommended for approval.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter would be addressed via a condition of consent were the application recommended for approval.</p> <p><u>Clause 69</u> of the EP&amp;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&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter would be addressed via a condition of consent were the application recommended for approval.</p>

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. In summary, the visual and streetscape impacts associated with the increase in height, bulk and scale are unsatisfactory and form recommended reasons for refusal of the application.</p> <p>(ii) <b>Social Impact</b> The proposed development would not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development would not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use. A more detailed assessment of this matter is provided below.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development for the reasons discussed in this assessment.
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	This assessment has found the proposal to be contrary to the relevant requirements of the WLEP and WDCP and would 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.

#### Section 4.15 (1)(b) - Economic Impact Assessment

Section 4.15 (1) (b) of the Environmental Planning and Assessment Act 1979 requires the consent authority to consider the economic impact of the proposed development in the locality.

The economic impact of the development was assessed primarily as part of the original development application/land and environment court proceedings and subsequent development and modification applications. Notwithstanding this, an assessment of the Economic Impact Assessment (EIA) submitted with the current application is provided below.

The EIA defines the likely catchment areas as follows:

- A Primary sector which surrounds the site within around 5km to the south and west and 8km to the east towards Mona Vale.
- A Secondary north-east sector extending from Narrabeen Lagoon north to Palm Beach.
- A Secondary south-east sector from Narrabeen to Manly and Middle Harbour.
- A Secondary west sector which extends as far as Gordon and Turramurra on the Pacific

Highway.

The catchment area has an estimated population of approximately 325,000 (2023) and is projected to increase by over 11,000 by 2030. The EIA also indicates that the catchment population's total available retail spending and large format retail spending are also projected to increase by 2030. The EIA states that the proposed additional floor space would be beneficial in terms of consumer benefits and generation of additional direct and indirect employment. The EIA does not foresee any substantial negative impacts on other centres in the region given the minimal proportion of additional floor area (approx. 4%) in comparison to the existing HomeCo Centre.

- *"The positive effects would include an estimated 20 or so staff positions created within the additional 1,422 sqm floorspace, based on typical averages for large format retailers. This translates to around 15 or so 'full-time equivalent' jobs. Indirect jobs would also be created in the wider economy.*

*The new tenants would expand the range and/or depth of retail on offer for the local community, at a location that has proved successful and is convenient to people living in the catchment given the lack of dedicated LFR centres elsewhere in this part of Sydney.*

*The introduction of just 1,422 sqm [1468m<sup>2</sup>] of additional retail floorspace would have no effect on other centres in the region. For example, at typical averages the additional sales generated by this floorspace would be likely no more than around \$5-6m, which is an insignificant amount in the context of a spending market of \$7.5bn (it represents less than 0.1% of the market) of which \$1.8bn (of which the additional sales represents less than 0.4%) is spent on LFR merchandise. In any case, a large share of the 'impact' would involve competition with retailers within HomeCo Belrose itself."*

The EIA demonstrates that while the proposal may increase competition between retailers within HomeCo Belrose, there is sufficient local demand to ensure that there would be negligible impact on the viability of other centres in the region.

For these reasons, the proposal is not considered to result in any unreasonable economic impacts.

## **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 and Design, dated 10 August 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 would be incorporated into the conditions of consent were the application recommended for approval.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 24/11/2022 to 08/12/2022 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:
National Parks & Wildlife Service - Sydney North Area	82 Ferguson Street FORESTVILLE NSW 2087

One (1) submission was received from the National Parks and Wildlife Service (as an adjoining land owner) in relation to the proposed development.

The submission requested the imposition of conditions in relation to:

- Prevention of stormwater runoff, sediment and other materials entering the National Park;
- Prohibition on use of the National Park for access to the development site, storage of materials and machinery and maintenance access;
- Prevention of soil disturbance within the National Park;
- Reporting of waste, spoil or sediment spill into the National Park; and
- Compliance with *Australian Standard AS3959 (2009) – 'Construction of buildings in bushfire-prone areas'* (AS3959) and the *Building Code of Australia (BCA) 2010 references AS3959-2009* for building in bush fire prone areas.

Comment: Given the distance between the development site and the adjacent National Park, it is not anticipated the proposal would result in or involve these occurrences. Regardless, were the application recommended for approval, these matters could be incorporated into the conditions of consent.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b><i>Supported with conditions.</i></b></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>

<p>Environmental Health (Industrial)</p>	<p><b>Supported with conditions.</b></p> <p><b>General Comments</b> Development consent is required for proposed alterations and additions to the existing bulky goods centre comprising and increase in GFA of 1,468m<sup>2</sup>. It is proposed to reconfigure the second floor to comprise a total of six tenancies:</p> <ul style="list-style-type: none"> <li>▪ Tenancy 1 – 48m<sup>2</sup></li> <li>▪ Tenancy 2 – 42m<sup>2</sup></li> <li>▪ Tenancy 3 – 481m<sup>2</sup></li> <li>▪ Tenancy 4 – 485m<sup>2</sup></li> <li>▪ Tenancy 5 – 1,700m<sup>2</sup></li> <li>▪ Tenancy 6 – 1,200m<sup>2</sup></li> </ul> <p>The development of the extension to second floor will necessitate the removal of 64 car parking spaces to the roof.</p> <p>Environmental Health has reviewed our main concern - Potential Noise impacts</p>
<p><b>Internal Referral Body</b></p>	<p><b>Comments</b></p>
	<p>An acoustic assessment in summary states: " 7.1 No acoustic treatment is required for new plant located in specified locations (roof-top), that satisfies the following noise emission limits: Lw, dB(A) SPL at 1m dB(A) Air conditioning Plant 102 96 7.2 If noise emissions from individual items of air conditioning plant exceed the limits shown in Item 7.1 above acoustic barriers must be constructed between the plant and residences. Barrier construction should consist of either Acoustisorb panels (available through Modular Walls) or an outer layer of one sheet of 12mm fibre cement sheeting (Villaboard, Hardiflex), or 19mm marine plywood. The inside (plant side) is to be lined with an absorbent foam to reduce reverberant sound (fibrous infills are not recommended as they will deteriorate if wet), and must be minimum 300mm above the top of the plant item. 7.3 The contractor responsible for supplying and installing the plant should be asked to supply evidence that installed plant meets specified noise emission limits, or that noise control included with the plant is effective in reducing the sound level to the specified limit. Once selection and location of plant has been finalised, details should be forwarded to the acoustic consultant for approval. A noise impact assessment for existing and new mechanical plant on the roof of HomeCo Belrose, has been completed. This assessment has shown that, based on supplied information and measurements conducted at the site, the noise impact from all new and existing plant is predicted to be compliant with the criteria at all nearby residential receivers." There appears to be no impact/expansion or new food premises. Environmental Health therefore supports the proposal subject to conditions.</p>

<p>Traffic Engineer</p>	<p><b><i>Supported with conditions.</i></b></p> <p><b>Additional comments - 4/5/23</b></p> <p>The additional information provided by the applicant's traffic engineer is noted and the additional material has addressed the concerns raised in the original referral comments regarding Traffic generation, vehicular access and loading. The applicant's comments regarding pedestrian access are noted however the development generates pedestrian movements across Niangala Close and facilities to cater for these movements are required. While it is agreed that a marked pedestrian crossing is inappropriate in this location a pedestrian refuge with pram ramps located to the north of the main access driveway of the development and adjacent to the existing underutilised Taxi Pick up zone would be ideal to both slow traffic and allow pedestrians to stage their crossing. This will be conditioned</p> <p><b>Original referral - 1/3/23</b></p> <p>The proposed development is for additional large format retail, improved dining precinct and enhancement of level 2 rooftop to the existing Bulky Goods Retail development known as Belrose Super Centre. The improvements will increase the floor area of the Super Centre from 34810 m<sup>2</sup> to 36470m<sup>2</sup> an increase of 1660m<sup>2</sup>. Vehicular ingress and egress arrangements for the centre will remain unchanged.</p> <p><u>Parking</u></p> <p>The Warringah DCP suggests that large format (bulky goods) retail outlets should determine their parking requirements by comparison with similar developments.</p> <p>As the existing Super Centre has been operated in this location for several years at a similar scale, its own operations have been used for this analysis. It is currently served by some 1,040 carparking spaces. The proposed amendments will reduce the available parking on the site to a total of 974 parking spaces i.e 66 less spaces than existing. The applicant's traffic consultant has undertaken parking surveys on Saturday 20 August 2022 (Saturday being the busiest trading day of the week) which identified a peak parking demand on the site of 455 spaces occupied at 2:00pm. For comparison, a survey undertaken on Saturday 30 October 2021 found a peak parking demand of 635 spaces occupied i.e one space per 54.8m<sup>2</sup>. Both surveys suggest that the existing parking provision of 1040 spaces is well in excess of what is needed to cater for demands generated by the existing tenancies on the site. Using the peak parking occupancy rate (one space per 54.8m<sup>2</sup> of floor area) from the two parking surveys the expanded floor area of 36,470m<sup>2</sup> would generate a peak parking requirement of some 666 spaces.</p>
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Internal Referral Body	Comments
	<p>As noted in the applicants traffic report, the RMS guide to traffic generating developments suggests that retail centres are busiest in December with traffic flow surveys indicating up to 30% busier than in October. It is noted that parking surveys conducted to support DA2014/139 for this site found a peak parking occupancy of 740 spaces on Friday 27/12/2013 (1 space per 43.2m<sup>2</sup>) This would suggest that a peak December parking demand of some 844 spaces may be required to support the proposed floor area of 36470m. This is still less than the 974 spaces that will be available on site. The RMS guide to traffic generating developments also notes "If the proposed development is an extension of an existing retail development, additional parking demand could be less than proportional to the increase in floor area"</p> <p>Given the above, the proposed parking supply of 974 spaces is considered acceptable.</p> <p>A condition of consent will be added to require that the existing electronic parking availability system be adjusted to suit the new parking arrangements and updated to provide real time parking availability information to provide advice and guidance to motorists with regard to available parking.</p> <p><u>Traffic Generation</u></p> <p>The predicted traffic generation numbers have been reviewed and while the quantum of traffic generated by the proposed expansion is not disputed the distribution of the traffic is questioned. It is unclear why a such a high proportion of the traffic generated by the expansion has been allocated to the rooftop parking area given that volumes using the basement carpark access are almost double that for the rooftop access under existing conditions.</p> <p>It is also noted that although traffic counts have been undertaken at the access driveway into the basement carpark no SIDRA analysis of the operation of this junction has been undertaken. The capacity of the right turn bay into the Niangala Close basement carpark entrance needs to be reviewed. At present the bay is capable of accommodating a queue of 5 vehicles and under peak conditions such as in the December peak trading period this turning bay is full/near full. There is concern that it may queue out blocking northbound flows to other sites such as Bunnings. Further traffic generation data analysis in light of the above is required including submission of the SIDRA outputs for all modelled intersections for Council's review.</p>

Internal Referral Body	Comments
	<p><u>Vehicular Access</u></p> <p>The vehicle ingress/egress points from the centre remains unchanged.</p> <p>No dimensioned plans or swept path analysis have been provided to confirm that the design of the parking area is compliant with the requirements of AS 2890.1 (Off-street car parking). These details should be provided for review.</p> <p><u>Loading</u></p> <p>The new retail tenancies will be served by the existing loading dock on level 1 and a new loading bay adjacent to the level 2 extensions to cater for medium rigid trucks up to 8.8 metres in length. No details for the new loading dock have been provided however the applicant's traffic consultant advises that the new Loading Bay will be designed in accordance with the requirements of the Australian Standard for Parking Facilities (commercial vehicles) AS2890.2. No swept path plots or dimensioned plans have been provided and these should be provided to demonstrate that access to and from the local road network by a medium rigid truck to the new Loading Dock in a forwards direction is achievable.</p> <p><u>Pedestrian Access Improvements</u></p> <p>The applicant's traffic consultant has highlighted the need for the development to be accessible by walking cycling and public transport.</p> <p>There is an absence of any facilities to assist pedestrians to cross Niangala Close and Council officers have received many requests from pedestrians requesting provision of crossing facilities to ensure the safety of and assist pedestrians crossing to/from the Super Centre and other premises in Niangala Close, Belrose. Given the intensification of use of the Super Centre this demand will only increase. The developer will therefore be requested to provide designs for Council staff review and Traffic Committee approval for pedestrian crossing and amenity improvements on Niangala Close, between the Narabang Way roundabout and the roundabout at the access point to Bunnings. The approved works will then need to be constructed at the applicant's cost prior to occupation. It is envisaged that a pedestrian refuge at/near the Narabang Way roundabout and another immediately north of the driveway ingress into Belrose Super Centre will be required potentially with localised road widening to cater for two way truck movements.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><b>Supported, subject to Conditions.</b></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>
Roads and Maritime Service - SEPP (Transport and Infrastructure) 2021, s2.122 - Traffic generating development	<p><b>Supported, subject to Conditions.</b></p> <p>TfNSW Comment</p> <p>Reference is made to Council's referral regarding the abovementioned application, which was referred to Transport for NSW (TfNSW) for comment in accordance with Clause 2.122 of the <i>State Environment Planning Policy (Transport and Infrastructure) 2021</i>.</p> <p>TfNSW has reviewed the application and has no requirements as the proposed development is not expected to have a significant impact on the classified road network.</p>

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

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

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

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

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

##### SEPP (Transport and Infrastructure) 2021

###### Ausgrid

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

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

supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

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

Roads and Maritime Service (RMS)

Section 2.118 - Development with frontage to classified road states:

*The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
  - (i) the design of the vehicular access to the land, or*
  - (ii) the emission of smoke or dust from the development, or*
  - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment:

- (a) The existing access to the site is via Niangala Close, which is not a classified road.
- (b) The proposed development would not have a significant impact on the ongoing operation of Forest Way or Mona Vale Road, as advised by TfNSW.
- (c) The proposed development is not of a type that is sensitive to traffic noise or vehicle emissions.

Section 2.122 and Schedule 3 of this Policy requires that the following development(s) are referred to the TfNSW as Traffic Generating Development:

<b>Purpose of Development</b>	<b>Size or Capacity</b> (Site with access to any road)	<b>Size of Capacity</b> (Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road)
Shops	2,000m <sup>2</sup>	500m <sup>2</sup>

**Note:** Under Section 2.122(2) of Chapter 2, 'relevant size of capacity' is defined as meaning:

“(2) (a) in relation to development on a site that has direct vehicular or pedestrian access to any road - the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or

(b) in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection - the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3.”

Comment:

The application was referred to Transport for NSW who did not raise any objection to the proposal.

**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
<p><b>1. Character of the area</b> Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?</p>	<p>The outcome for the signage is considered to be incompatible with the existing character of the area as the proliferation of signage at the south-eastern corner of the building is considered to result in visual clutter that would adversely impact the streetscape.</p>	NO
<p>Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?</p>	<p>The outcome for the signage is inconsistent with that of B7 Business Park zoning area as the extent of advertising at this prominent corner of the building is excessive in relation to the built form.</p>	NO
<p><b>2. Special areas</b> 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?</p>	<p>Given the extent of the existing and proposed sign locations concentrated at the south-eastern corner of the building, the proposed signage will result in adverse visual impacts upon the streetscape and public domain.</p>	NO
<p><b>3. Views and vistas</b> Does the proposal obscure or compromise important views?</p>	<p>The outcome for the signage does not compromise nor obscure views.</p>	YES

Does the proposal dominate the skyline and reduce the quality of vistas?	The outcome for the signage is not of a scale to cause unreasonable impacts upon the existing views of the skyline and vistas.	YES
Does the proposal respect the viewing rights of other advertisers?	The signage respects the viewing rights of other advertisers.	YES
<b>4. Streetscape, setting or landscape</b> Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	As above, the extent of the existing and proposed sign locations concentrated at the south-eastern corner of the building are excessive and considered inappropriate for this context.	NO
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The outcome for the signage is considered to give rise to adverse streetscape impacts.	NO
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposed signage zones are excessive and do not reduce clutter or simplify advertising.	NO
Does the proposal screen unsightliness?	There is no unsightliness to be screened	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The signage zones do not protrude above the building or structure.	NO
<b>5. Site and building</b> 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?	As above, the extent of advertising at the south-east corner of the building is excessive in relation to the built form.	NO
Does the proposal respect important features of the site or building, or both?	The proliferation of signage at the south-eastern corner of the building is not considered to respect the important features of the site.	NO
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	Details of the signage content have not been provided as part of the application.	N/A
<b>6. Associated devices and logos with advertisements and advertising structures</b> 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?	N/A	N/A
<b>7. Illumination</b> 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?	N/A	N/A
Can the intensity of the illumination be adjusted, if necessary?	N/A	N/A
Is the illumination subject to a curfew?	N/A	N/A

<b>8. Safety</b> Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The outcome for the signage will not reduce the safety for any road, pedestrian or bicyclist.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposal does not obscure sightlines from public areas.	YES

Accordingly, the proposed signage is not considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be inconsistent 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. 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 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.

#### **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?	No
zone objectives of the LEP?	No

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	11.0m	Exhaust duct: 22.7m	106.36%	No
		Roof: 21m	90.9%	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	No
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

#### Detailed Assessment

## 2.5 Additional permitted uses for particular land

Schedule 1 Additional Permitted Uses (3) permits the use of land identified as "Area 3" being at the corner of Mona Vale Road and Forest Way, Belrose for the purpose of a specialised retail premises, subject to development consent.

**Specialised retail premises** means a building or place the principal purpose of which is the sale, hire or display of goods that are of a size, weight or quantity, that requires—

- (a) a large area for handling, display or storage, or
- (b) direct vehicular access to the site of the building or place by members of the public for the purpose of loading or unloading such goods into or from their vehicles after purchase or hire, but does not include a building or place used for the sale of foodstuffs or clothing unless their sale is ancillary to the sale, hire or display of other goods referred to in this definition.

Accordingly, pursuant to the existing use of the site and subclause (3) of Schedule 1, the development is permitted with consent.

### Zone B7 Business Park

Despite not being a permissible use in the B7 zone, the proposed specialised retail premises' are permitted on the subject site pursuant to Schedule 1 (3) of the WLEP 2011.

The proposed development is considered against the underlying objectives of the B7 Business Park zone as follows.

- *To provide a range of office and light industrial uses.*

Comment

This objective is not applicable to the proposed development, which is permissible pursuant to the existing use rights applicable to the site.

- *To encourage employment opportunities.*

Comment:

In providing an additional 1468m<sup>2</sup> of commercial gross floor area, the proposed development would encourage further employment opportunities within the zone.

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

Comment:

The proposal involves additions to the existing Centre and is not anticipated to have any adverse impact upon the ability of other land uses to provide facilities or services to meet the day to day needs of workers in the area.

- *To create business park employment environments of high visual quality that relate favourably in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

Comment:

For the reasons discussed in this report, the proposal is **not** considered to result in a development of high visual quality that relates well to neighbouring land uses or the natural environment. As such, the proposal is assessed as being inconsistent with this objective.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of adjoining or nearby residential land uses.*

Comment:

The site is not bounded by any residential zones and the proposal would not adversely impact the amenity of any nearby residential properties.

Based on the above assessment, the proposal is inconsistent with objective (4) of the B7 zone and is not supportable and so this will form a recommended reason for refusal.

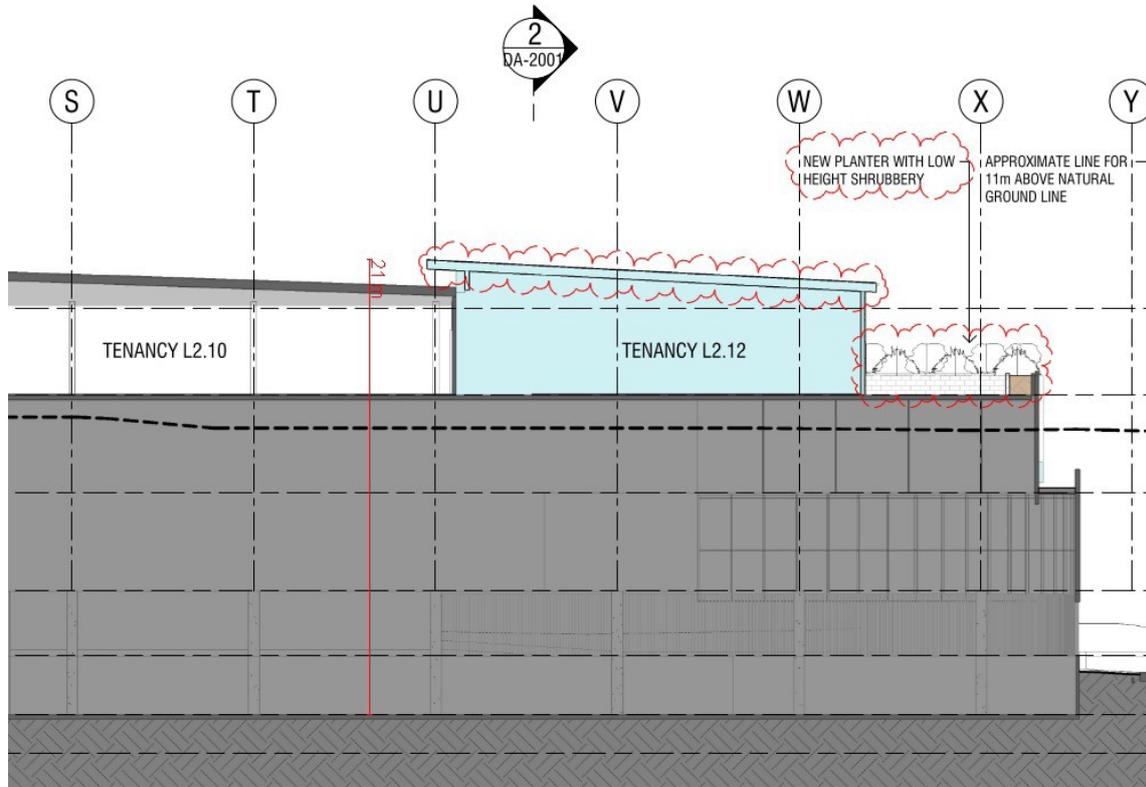
**Zone C2 Environmental Conservation**

The proposed development does not include any works within the C2 zoned portion of the site.

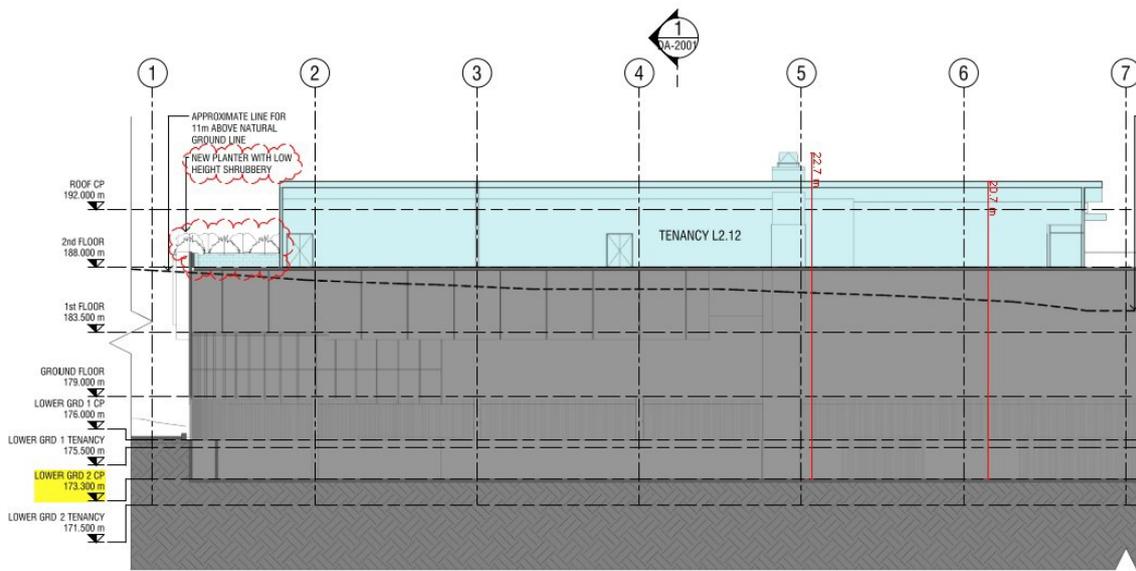
**4.6 Exceptions to development standards**

**Description of Non-compliance**

Development Standard:	Height of Buildings
Requirement:	11.0m
Proposed:	Exhaust duct: 22.7m Roof: 21m
Percentage Variation to Requirement:	Exhaust duct: 106.36% Roof: 90.9%



**Figure 1. Part Section 1 with 21.0m maximum roof height annotation (Drawing DA-2001 prepared by Buchan Group).**



**Figure 2. Part Section 2 with 22.7m maximum exhaust duct height annotation (Drawing DA-2001 prepared by Buchan Group).**

The above section plans indicate the maximum building height of the proposed additions. It is noted that the 11.0m height plane overlaid on the section plans is inaccurate in that it is not based on the *existing* ground level in accordance with the judgement in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582. For the purpose of this assessment, the maximum building height has been measured from the lowest floor level of the building (existing ground level) below the proposed additions.

#### **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 **not** demonstrated that the objectives of the development standard are achieved.

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.

### **Applicants Written Request**

The applicants written request argues, in part:

1. ***The proposal is entirely consistent with the underlying objectives and purposes of the standard, as demonstrated in Section 4.1.***  
Comment: The proposed development is not considered to achieve the underlying objectives of the height of buildings development standard as assessed below. Regardless, consistency with the objectives of the standard is not identified as an environmental planning ground. As such, the first environmental planning ground put forward by the applicant is not sufficient.
2. ***The proposal is entirely consistent with the underlying objective or purpose of the B7 Business Development zone, as demonstrated in Sections 4.2 and 4.3.***  
Comment: The proposed development is assessed as being inconsistent with Objective (4) of the B7 zone. Regardless, consistency with the objectives of the zone is not identified as an environmental planning ground. As such, the second environmental planning ground put forward by the applicant is not sufficient.
3. ***Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in Section 4.3.***  
Comment: The reasonableness and necessity of compliance with the development standard relates to the objectives of the standard and is not identified as an environmental planning ground. As such, the third environmental planning ground put forward by the applicant is not sufficient.
4. ***The proposed non-compliance results in a built form and land use, which is permitted at the Site.***  
Comment: On the contrary, the proposed development does not result in a built form which is permitted at the site, as evidenced by the **106.36%** building height variation that the Applicant's written request is seeking to justify and the 7.7% variation WDCP B14 (Main Roads Setback to Forest Way). As noted below, the existing built form is also non-compliant with the site coverage control and the required front setbacks to Garigal Road and Forest Way. Further, the permissibility of the proposed land use is not identified as an environmental planning ground. As such, the fourth environmental planning ground put forward by the applicant is not sufficient.
5. ***The proposal is consistent with the desired future character of the Site within the surrounding locality and generally complies with the relevant built form controls.***  
Comment: The desired future character of the locality is set out by the planning controls contained within the WLEP and WDCP. Given the significance of the proposed building height variation and the setback non-compliances detailed below, it cannot be said that the proposal is consistent with the desired future character of the locality or that it generally complies with the relevant built form controls. As such, the fifth environmental planning ground put forward by the applicant is not sufficient.
6. ***The proposal has been designed to be sympathetic and respectful to the existing surrounding amenity and local character, particularly regarding visual bulk, privacy and overshadowing whilst expanding on the existing functional residential building Site.***

Comment: It is acknowledged that the proposal will not cause unreasonable privacy or overshadowing impacts. However, the extent and siting of the built form above the 11m height control is not considered sympathetic or respectful to the surrounding local character, particularly on the opposite corner to the south. The proposal represents a substantial increase in the volume of the built form that breaches the height plane and the setback control to Forest Way and would bring that non-compliant built form closer to the southern building line, increasing its visibility and visual prominence when viewed from the public domain. The bulk and scale of the proposal is visually intrusive and is incompatible with nearby developments within the surrounding B7 zone, which are more sympathetic to the bushland character of the locality. As such, the fifth environmental planning ground put forward by the applicant is not sufficient.

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 Height of Buildings development standard and the objectives of the B7 Business Park zone.

An assessment against these objectives is provided below.

#### **Objectives of the Development Standard**

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

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

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

#### Comment:

The proposed development is not compatible with the height and scale of surrounding and nearby development. Notably, the existing development at 1 Garigal Road, on the south-western corner of the intersection with Forest Way, is significantly lower in height and provides greater setbacks to its northern and eastern frontages, thereby minimising its visual bulk and scale. In

contrast, the proposed development seeks to extend the already non-compliant Level 2 built form towards the south, which exacerbates the already significant visual impact of the building on this exposed and prominent corner.

The Applicant's written request claims that the proposal is consistent with the height and scale of the existing development and would not add additional height to the site. Objective (a) does not require that development is compatible with the height of scale of the *existing* development, but with that of *surrounding and nearby development*. In any case, the proposal would materially add to the height and scale of the non-compliant Level 2 as demonstrated in the submitted *Visual Impact Assessment*, and is not supported.

For these reasons, the proposal is assessed as being inconsistent with Objective (a).

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

Comment:

Based on the submitted *Visual Impact Assessment*, the extent and location of the proposed building height breach would result in excessive visual impact as viewed from the surrounding public domain, primarily at the intersection of Forest Way and Garigal Road. Given that the building height control does not envisage any building mass and presence in the location proposed, the level of visual impact is found to be unacceptable.

For this reason, the proposal is assessed as being inconsistent with Objective (b).

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

Comment:

The surrounding locality is reflective of Warringah's bush environments, being bounded by Garigal National Park. The proposed development is not considered to minimise its visual impact on the scenic quality of the surrounding bush environment.

For this reason, the proposal is assessed as being inconsistent with Objective (c).

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

Comment:

By virtue of the proposed building height variation and insufficient parapet setbacks, the proposal fails to manage and mitigate the visual impact of the additions when viewed from the surrounding road network and National Park, particularly to those areas to the south-east of the site.

For this reason, the proposal is assessed as being inconsistent with Objective (d).

## **Zone Objectives**

The underlying objectives of the B7 Business Park zone are:

- ***To provide a range of office and light industrial uses.***

Comment

The proposed variation does not alter the proposal's consistency with this objective, as assessed earlier in this report.

- ***To encourage employment opportunities.***

Comment:

The proposed variation does not alter the proposal's consistency with this objective, as assessed earlier in this report.

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

Comment:

The proposed variation does not alter the proposal's consistency with this objective, as assessed earlier in this report.

- ***To create business park employment environments of high visual quality that relate favourably in architectural and landscape treatment to neighbouring land uses and to the natural environment.***

Comment:

For the reasons discussed in this Clause 4.6 Assessment and elsewhere in this report, the proposal is not considered to result in a development of high visual quality that relates well to neighbouring land uses or the natural environment. As such, the proposal is assessed as being inconsistent with this objective.

- ***To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of adjoining or nearby residential land uses.***

Comment:

The proposed variation does not alter the proposal's consistency with this objective, as assessed earlier in this report.

### **Conclusions on Zone Objectives**

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the B7 Business Park zone.

### **Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment**

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the 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 with the objectives of the height of buildings development standard and the zone objectives and the lack of sufficient environmental planning grounds, the concurrence of the Director-General for the variation to the development standard cannot be assumed.

## 6.2 Earthworks

The proposal does not involve any excavation works.

### Warringah Development Control Plan

#### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B4 Site Coverage	33.3% 13,396.59m <sup>2</sup>	39.5% 15,886m <sup>2</sup>	18.6%	<b>No (as approved)</b>
B7 Front Boundary Setbacks	Garigal Road: 10m	15.8m (proposed addition)	N/A	Yes
	Niangala Close: 6.5m	55.6m (proposed addition)	N/A	Yes
B14 Main Roads Setback	Forest Way: 30m	27.7m (proposed addition)	7.7%	<b>No</b>
	Mona Vale Road: 30m	327.6m (proposed addition)	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	33.3% 13,396.59m <sup>2</sup>	> 33%	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B4 Site Coverage	No	Yes
B7 Front Boundary Setbacks	Yes	Yes
B14 Main Roads Setback	No	No
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	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D23 Signs	No	No
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
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

##### **B4 Site Coverage**

The existing site coverage of 39.5% is non-compliant with the 33.3% control. Although the proposal does not result in any increase to the existing site coverage, the existing non-compliance is a relevant consideration insofar as the existing scope of development on site is representative of the site as developed, reaching its highest and best use.

##### **B7 Front Boundary Setbacks**

#### Compliance with control

The control requires setbacks of 10.0m to Garigal Road and 6.5m to Niangala Close.

The proposed additions are setback compliant distances from Niangala Close and Garigal Road as required by this control. While compliant, the proposed setback to Garigal Road is insufficient to minimise the visual impact of the built form (which is wholly non-compliant with the building height development standard) as viewed from the surrounding public domain. This matter is discussed in detail under the Clause 4.6 and WDCP D9 sections of this report.

In addition to the existing breaches of Section B14, the existing building is also non-compliant with the required setback to Garigal Close, with a minimum setback of 7.8m at the western end of the building.

### **B14 Main Roads Setback**

#### **Description of Non-compliance**

The control requires setbacks of 30m to Forest Way and Mona Vale Road. The setback to Mona Vale Road is compliant, however the proposed 27.7m setback to Forest Way results in a 7.7% variation to the control. It is also noted that the existing building breaches this control, with minimum setbacks of 20.7m to the lower levels and 27.7m to the existing built form at Level 2.

#### **Merit consideration:**

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

- ***To provide a densely landscaped buffer between the development and the main road/s.***

#### Comment:

The existing Forest Way setback provides an effective landscape buffer to the existing building as viewed from the west. However, the southward extension of Level 2 cannot be screened sufficiently and will result in an unacceptable level of visual impact when viewed from Forest Way and the surrounding public domain.

- ***To enhance the aesthetic quality of main roads.***

#### Comment:

The proposal would not enhance the aesthetic quality of Forest Way, from which the existing B7 zone presents predominantly as commercial buildings within a landscaped setting. Conversely, the proposed additions are considered to be of a height and scale that is incompatible with nearby developments and the surrounding bushland character.

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

Accordingly, this assessment finds that the proposal is **not supported** in this particular circumstance.

### **C2 Traffic, Access and Safety**

The application was referred to Council's Traffic section and TfNSW, with no concerns raised in relation to vehicular movements or car parking. The conditions recommended by Council's Traffic section would be applied were the application recommended for approval.

### **C4 Stormwater**

Were the application recommended for approval, conditions would be recommended to ensure appropriate disposal of stormwater from the site.

### D3 Noise

The submitted Acoustic Report anticipates that the proposal would comply with the relevant noise criteria in relation to nearby residential receivers. Were the application recommended for approval, the recommendations of the report would be incorporated into the conditions of consent.

### D6 Access to Sunlight

#### Compliance with control

#### **Requirements**

1. *Development should avoid unreasonable overshadowing any public open space.*

#### Comment:

The proposal would not cause any adverse overshadowing of the public domain, with minimal additional impact to the Garigal Road road reserve throughout the day.

### D7 Views

The proposal will not adversely impact views from surrounding developments. Concerns regarding the visual bulk and scale impacts of the development are addressed elsewhere in this report.

### D9 Building Bulk

#### **Description of Non-compliance**

#### **Requirements**

1. *Side and rear setbacks are to be progressively increased as wall height increases.*
2. *Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.*
3. *On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular:  
The amount of fill is not to exceed one metre in depth.  
Fill is not to spread beyond the footprint of the building.  
Excavation of the landform is to be minimised.*
4. *Building height and scale needs to relate to topography and site conditions.*
5. *Orientate development to address the street.*
6. *Use colour, materials and surface treatment to reduce building bulk.*
7. *Landscape plantings are to be provided to reduce the visual bulk of new building and works.*
8. *Articulate walls to reduce building mass.*

#### Comment:

Despite being setback from the levels below, the proposed design is unsatisfactory in minimising the visual perception of the new built form that is not anticipated under the building height control for the site and locality. Furthermore, the proposed additions are non-compliant with the required front setback to Forest Way and do not incorporate articulation of the Level 2 wall planes to provide adequate visual relief. Noting the existing building's non-compliance with height and setbacks the proposed use of colours, materials and planter boxes are not considered sufficient to minimise the visual bulk of the development in this case. The proposed amendments, including; the lowering of the building height by

470mm, reduction in the width by approximately 1.0m at the western elevation and deletion of the eastern overhang, are not considered sufficient to materially alter the level of visual impact indicated in the submitted VIA or resolve Council's concerns in relation to bulk and visual impact.

Importantly, in the context of this site, the existing stepping of the built form from north to south and toward the most visually prominent part of the site (Garigal Road and corner of Forest Way), is a good urban design characteristic of the current development, and to lose this critical design quality will be detrimental to the streetscape and deleterious to the broader objective of ensuring a high quality business park environment.

Accordingly, the proposal is assessed as non-compliant with Requirements (1), (2) & (8) of the control.

### **Merit Consideration**

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

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

Comment:

For the reasons discussed above and elsewhere in this report, the proposal is not considered to represent a good or innovative design that would improve the surrounding environment.

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

Comment:

Noting the proposal's non-compliance with the height of buildings development standard, the non-compliant front setback to Forest Way and the inadequate front setback to Garigal Close, it cannot be said that the visual impact of the development when viewed from adjoining properties, streets and the public domain has been minimised.

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

Accordingly, this assessment finds that the proposal is **not supported** in this particular circumstance.

### **D10 Building Colours and Materials**

No schedule of materials and finishes was submitted with the application, however the Statement of Environmental Effects and photomontages indicate that the finishes would complement the existing character and styling of the building. Were the application recommended for approval, conditions of consent would be imposed in this regard.

### **D12 Glare and Reflection**

It is not anticipated that the proposal would have adverse sunlight glare impacts on surrounding developments. Were the application recommended for approval, conditions of consent would be imposed in relation to glare and light spill from signage.

## D23 Signs

### Description of Non-compliance

The proposal includes 2 new signage zones at the Level 1 southern and eastern elevations. Details of the signage content have not been provided as part of the application. The signage zones have dimensions as follows:

- South - 45m<sup>2</sup> (9m L x 5m H)
- East - 32.5m<sup>2</sup> (6.5m L x 5m H)

### Requirements

1. *Signs are to be sited and designed so that they do not adversely impact on the amenity of the streetscape and the surrounding locality. In particular, signs are not to dominate or obscure other signs or result in visual clutter.*
2. *Signs are to be compatible with the design, scale and architectural character of the building or site on which they are to be placed.*

### Comment:

In addition to the proposed 45m<sup>2</sup> southern and 32.5m<sup>2</sup> eastern signage zones, the existing building contains a further 83m<sup>2</sup> of signage at the southern elevation and 84m<sup>2</sup> at the eastern elevation. The ground floor tenancy also appears to have installed two large window signs at the south-eastern corner; it is unclear whether any consent has been granted for these signs.

This proliferation of signage at the south-eastern corner of the building is considered to result in visual clutter that would adversely impact the streetscape. The extent of advertising at this prominent corner of the building is excessive in relation to the built form.

### 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.*
- *To achieve well designed and coordinated signage that uses high quality materials.*
- *To ensure that signs do not result in an adverse visual impact on the streetscape or the surrounding locality.*
- *To ensure the provision of signs does not adversely impact on the amenity of residential properties.*
- *To protect open space areas and heritage items or conservation areas from the adverse impacts of inappropriate signage.*

### Comment:

Given the extent of the existing and proposed sign locations concentrated at the south-eastern corner of the building, the proposed signage zones are not considered to be suitably designed and located and will result in adverse visual impacts upon the streetscape and public domain. As such, the proposal is

assessed being inconsistent with Objectives (1), (2) and (3).

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

Accordingly, this assessment finds that the proposal is **not supported** in this particular circumstance.

#### **E1 Preservation of Trees or Bushland Vegetation**

The proposal is limited to works at the roof level of the existing building and will not adversely impact any trees or bushland vegetation.

#### **E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat**

The proposal is limited to works at the roof level of the existing building and will not adversely impact any threatened species, biodiversity values, wildlife corridors, native vegetation or environmental features present in the vicinity of the site.

#### **E10 Landslip Risk**

The site is mapped as Landslip Risk Areas A and B. A preliminary Geotechnical Report was prepared in relation to the proposal and concludes that no further geotechnical investigation is required.

#### **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 \$33,699 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,369,934.

#### **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, 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
- Consistent 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 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.

The detailed assessment of the proposed development finds that the proposal is an overdevelopment of the site and inconsistent with the desired future character as set by the applicable controls.

The variations to both the WLEP 2011 and WDCP 2011 planning controls, which are intended to limit the intensity, impact and ensure an appropriate and suitable character of development, demonstrate that the proposed additions are not suitable or appropriate on this site, particularly given the sites gateway location at the main entry to the Austlink Business Park.

The proposed additions are excessive in height, bulk and scale and would cause undue visual impact when viewed from the surrounding road network and public domain, noting that this built form is entirely above the prescribed 11.0m building height control, and will significantly increase the amount of built form which is non-compliant and that will have a demonstrable impact.

The proposal seeks a variation of 106.36% to the building height development standard and the Applicant's Clause 4.6 written request is not well-founded and fails to adequately justify this breach.

Importantly, in the context of this site, despite the existing non-compliant nature of the building, the existing stepping of the built form from north to south and toward the most visually prominent part of the site (Garigal Road and corner of Forest Way), is a good urban design characteristic of the current development, and to lose this critical character attribute and design quality will be detrimental to the streetscape and deleterious to the broader objective of ensuring a high quality business park

environment.

Whilst the applicant cites examples of non-compliant developments in the business park, including the subject building, these variations are based on specific environmental planning grounds, which simply do not exist in relation to the current proposal to add more floorspace for commercial gain. Furthermore, no other site in the business park has such a high level of visual prominence and exposure to an arterial road (in this case Forest Way), as the subject site, which elevates the importance of ensuring the built form does not overly dominate, which this assessment finds that it does.

For the reasons set out in this report, the application is recommended for **REFUSAL**.

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 DA2022/1869 for the Alterations and additions to Belrose Super Centre including six (6) new tenancies for use as specialised retail premises and reconfiguration of the existing car park on land at Lot 1 DP 1104786,4 - 6 Niangala Close, BELROSE, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of Buildings and Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011.

Specifically, the proposal is not compatible with the height and scale of surrounding and nearby development, the proposed building height breach would result in excessive visual impact as viewed from the surrounding public domain, the proposed development is not considered to minimise its visual impact on the scenic quality of the surrounding bush environment, and the proposal fails to manage and mitigate the visual impact of the additions when viewed from the surrounding road network and National Park. In this regard, the proposal is inconsistent with the underlying objectives of WLEP Clause 4.3 Height of Buildings.

Further, the applicant's written request under Clause 4.6 of MLEP has not adequately demonstrated that compliance with the standards is unreasonable or unnecessary, that there are sufficient environmental planning grounds to justify the contraventions or that the proposed development will be in the public interest.

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

Specifically, the proposal is contrary to the relevant requirements of the WLEP and WDCCP and would 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.

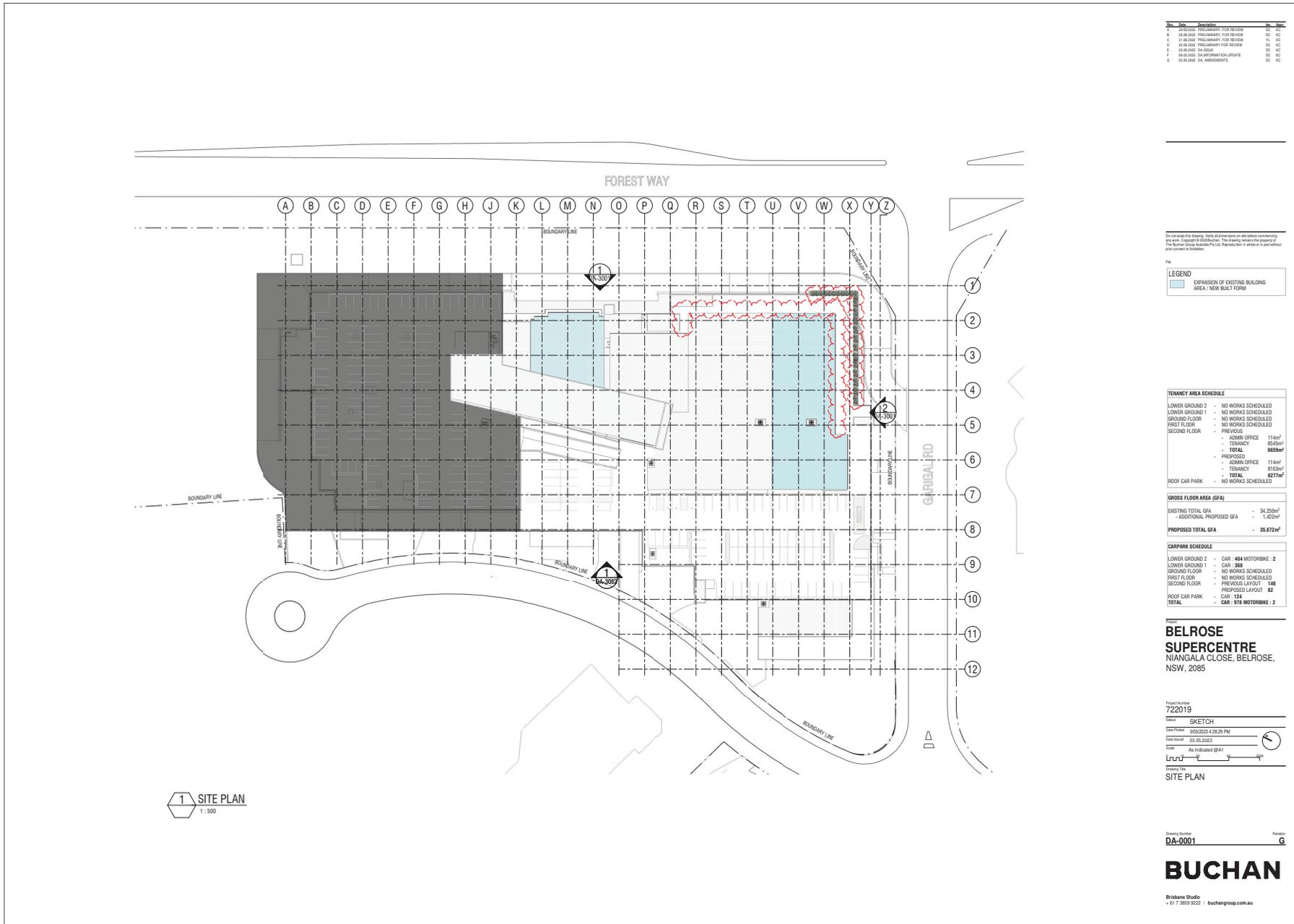
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Industry and Employment) 2021.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone B7 Business Park of the Warringah Local Environmental Plan 2011.
6. 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 B14 Main Roads Setback of the Warringah Development Control Plan.

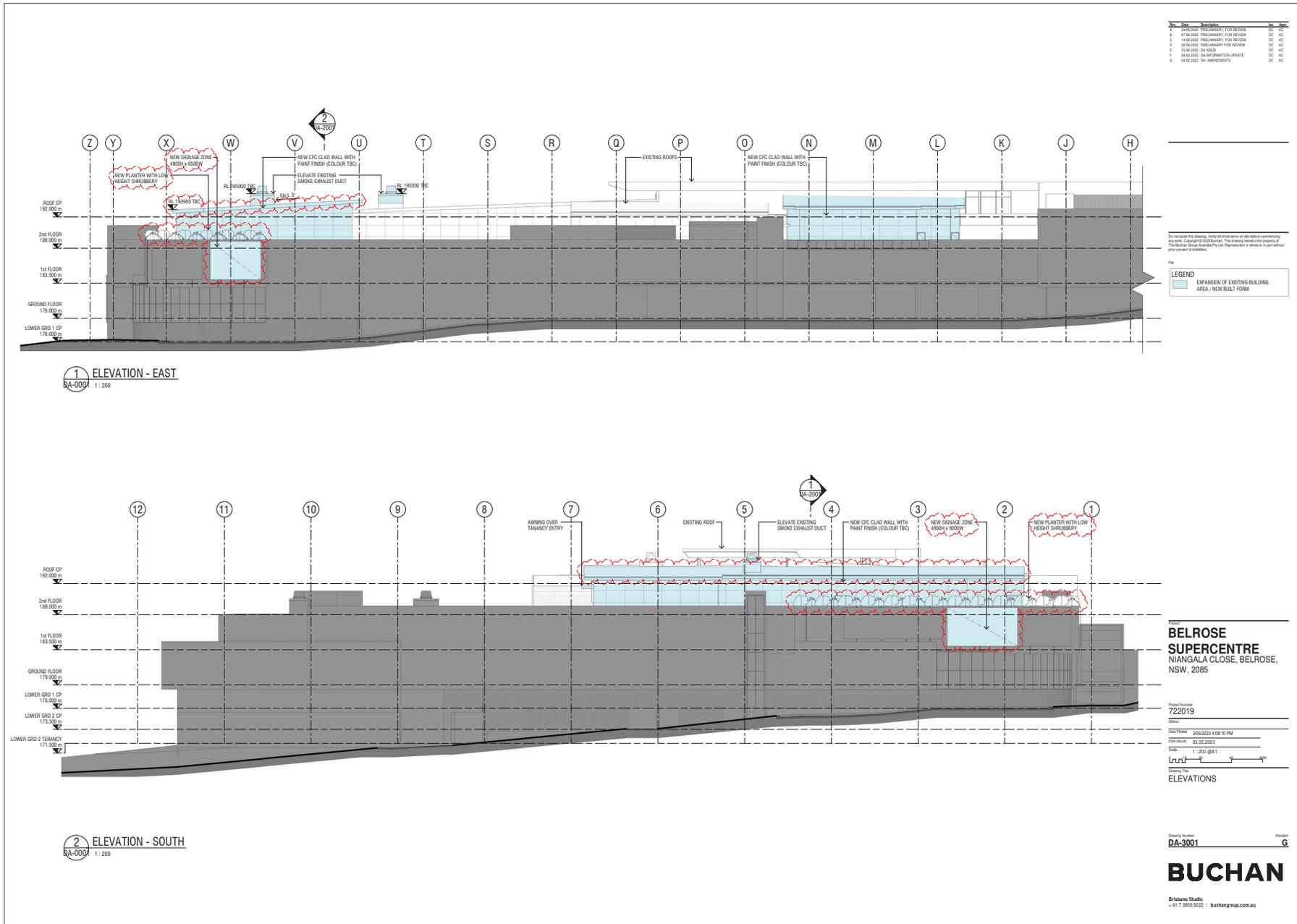
Specifically, the non-compliant setback to Forest Way contributes to the proposal's excessive bulk and visual impact when viewed from the surrounding road network and public domain.

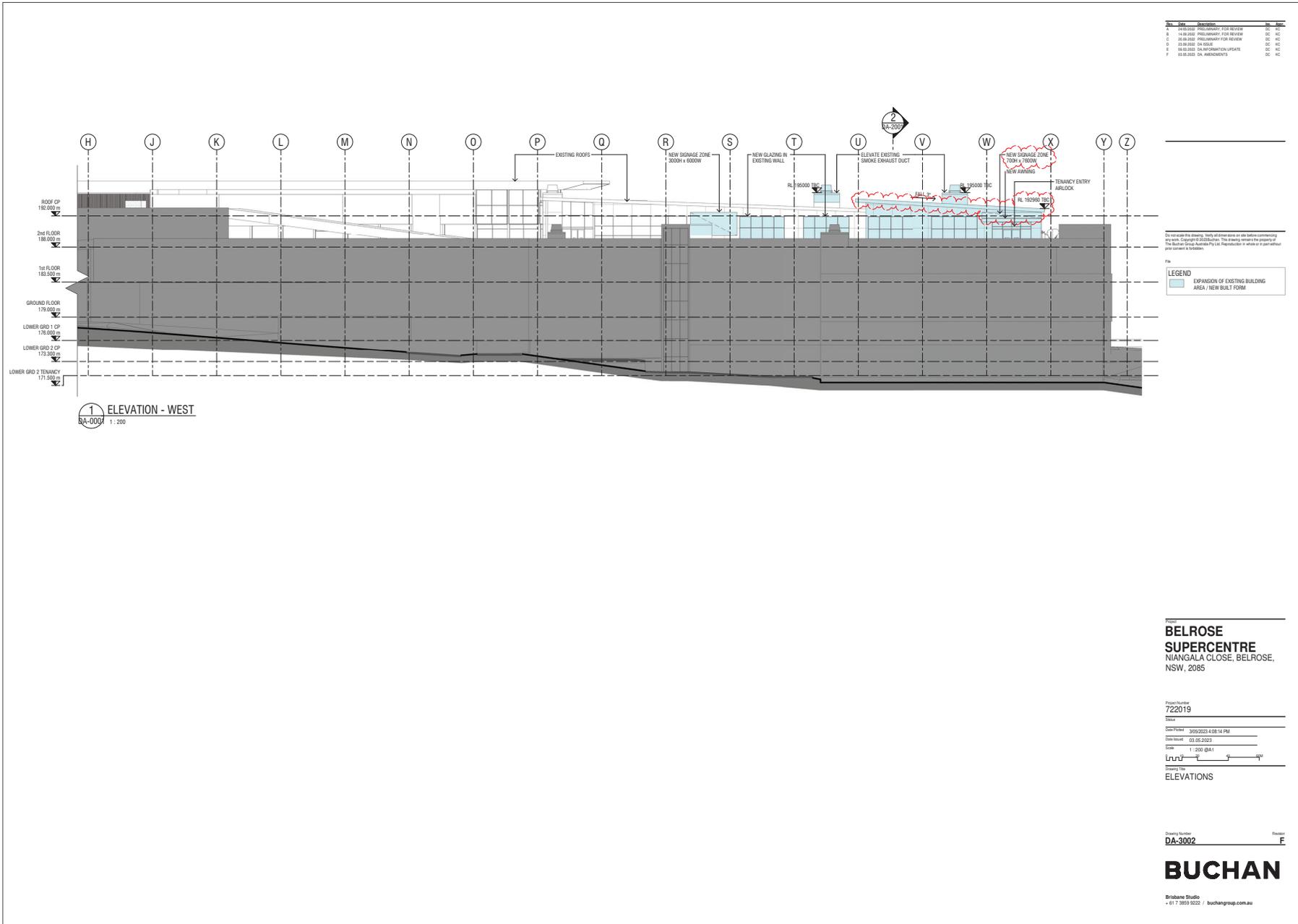
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan.

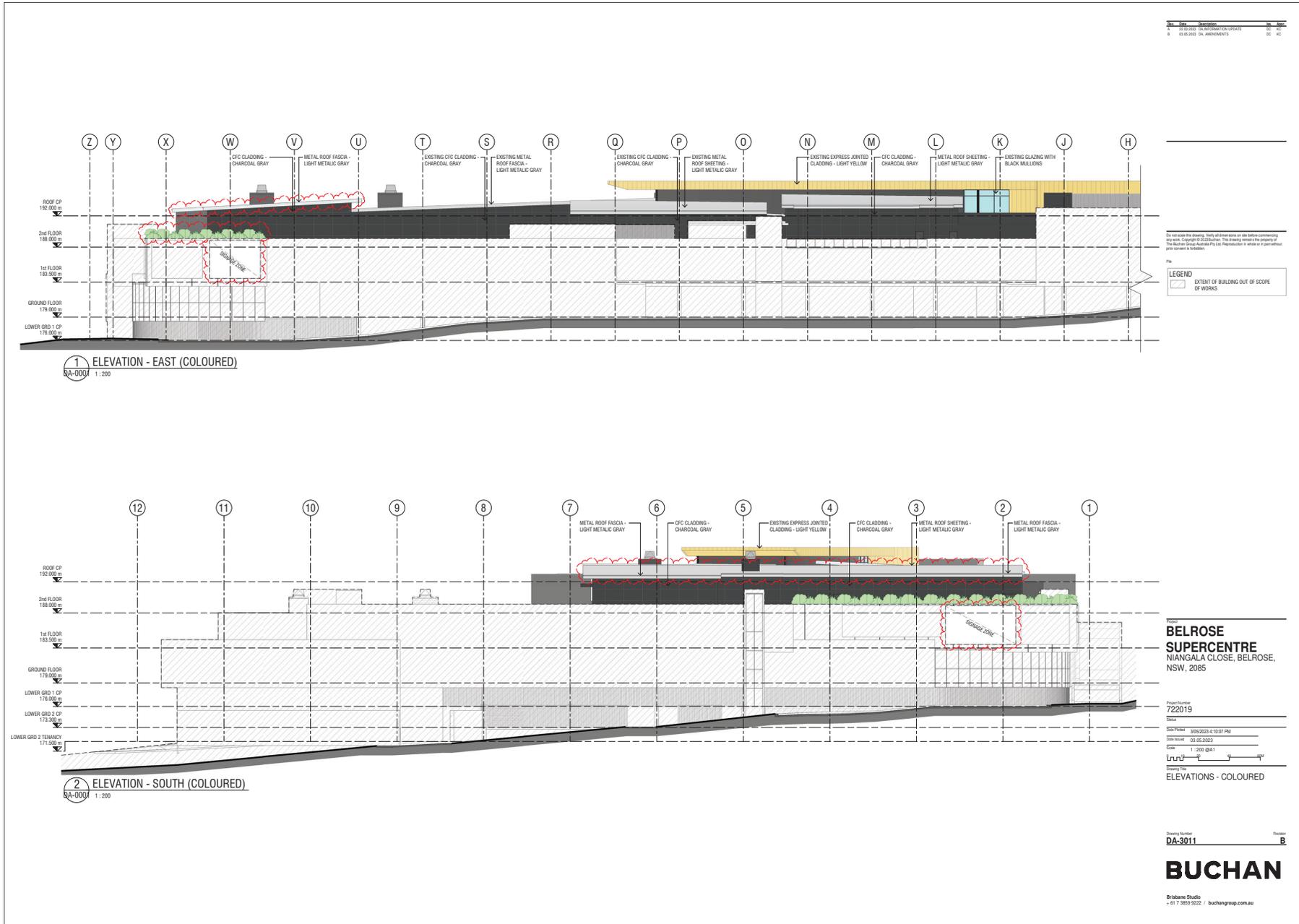
Specifically, the proposed variations to the building height development standard and the front setback, in combination with the adequate articulation of the built, fail to achieve a reasonable level of building bulk and scale.

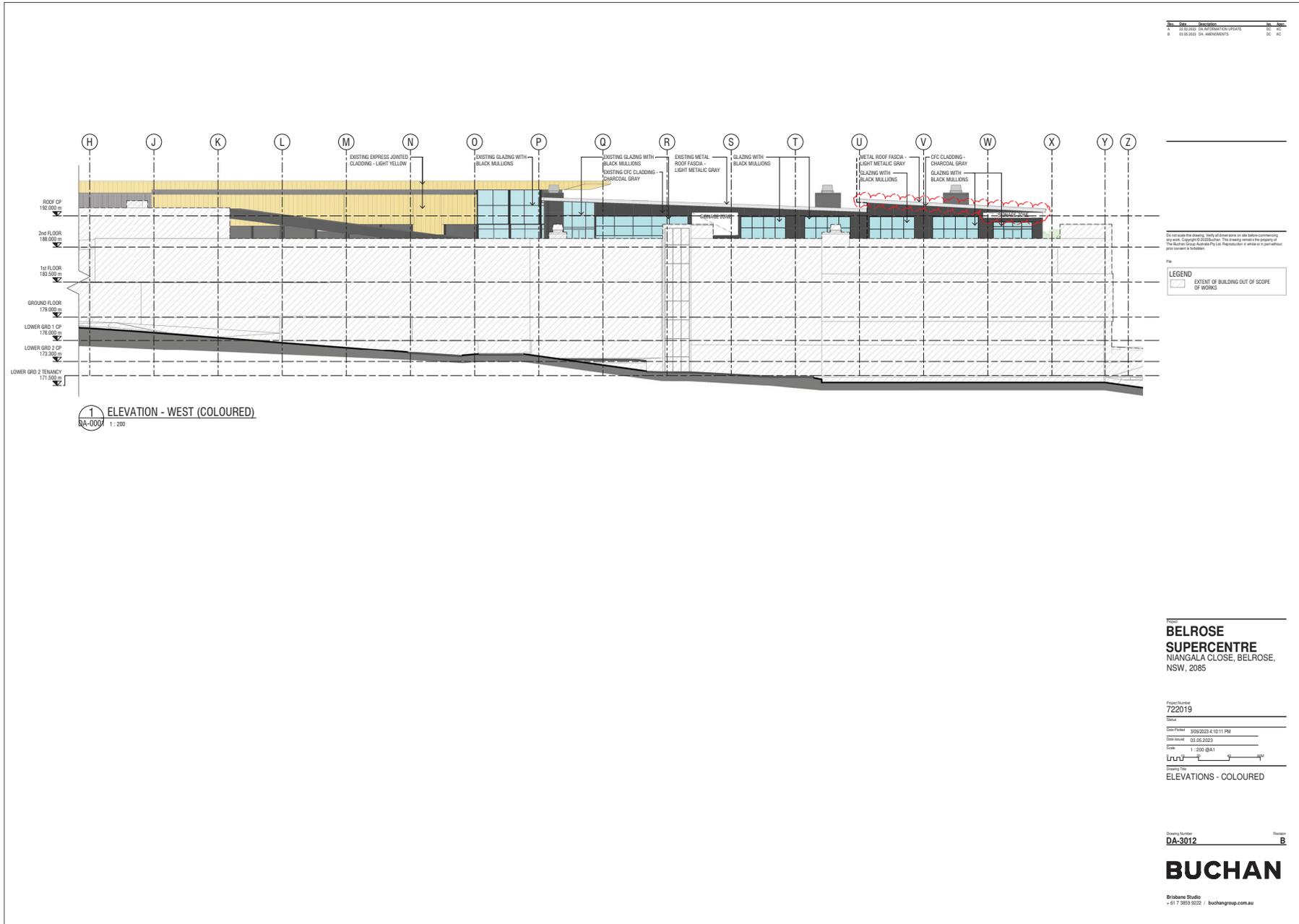
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D23 Signs of the Warringah Development Control Plan.









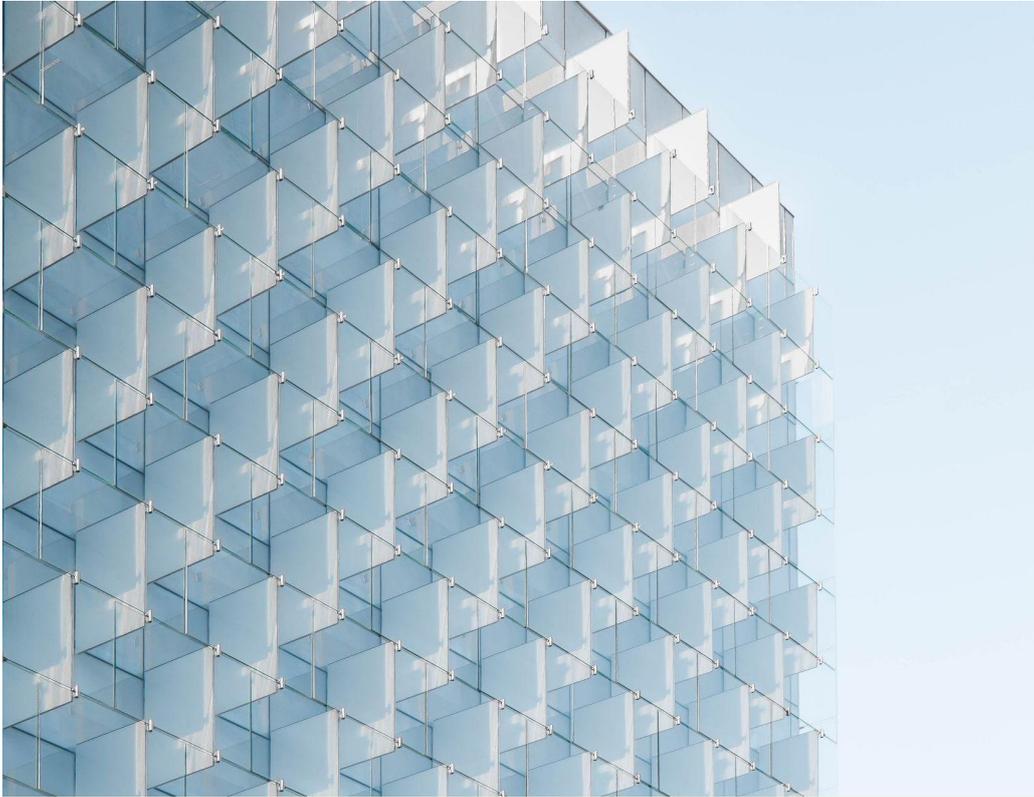


# WILLOWTREE PLANNING



26 September 2022

Ref: WTJ21-074  
Contact: Richard Seaward



## CLAUSE 4.6 VARIATION REQUEST HEIGHT OF BUILDING

### PROPOSED ALTERATION AND ADDITIONS TO BELROSE SUPA CENTRE

4 – 6 Niangala Close, Belrose  
Lot 1 DP1104786

—  
Prepared by Willowtree Planning Pty Ltd  
on behalf of HMC Capital

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**Clause 4.6 Variation**

Proposed Alteration and Additions to Belrose Supa Centre  
4 – 6 Niangala Close, Belrose



DOCUMENT CONTROL TABLE			
Document Reference:	WTJ21-074-v2		
Contact	Richard Seaward		
Version and Date	Prepared by	Checked by	Approved by
Version No. 1 – 15/09/2022	Richard Seaward Senior Town Planner	Chris Wilson Managing Director	Chris Wilson Managing Director

*In the spirit of reconciliation and recognition, Willowtree Planning acknowledges the Traditional Owners of this Country throughout Australia and their continuing and ongoing connections to land, waters and community. We show our respect to Elders – past and present. We acknowledge that we stand on this Country which was and always will be recognised as Aboriginal Land. We acknowledge the Traditional Owners of the Lands in this Local Government Area, belonging to the local Aboriginal People, where this proposal is located upon.*

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**Clause 4.6 Variation**

Proposed Alteration and Additions to Belrose Supa Centre  
4 – 6 Niangala Close, Belrose



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**Clause 4.6 Variation**

Proposed Alteration and Additions to Belrose Supa Centre  
4 – 6 Niangala Close, Belrose

**PART A PRELIMINARY****1.1 INTRODUCTION**

This Clause 4.6 variation request (Variation Request) has been prepared in support of a Development Application (DA) for the proposed alterations and additions to Belrose Supa Centre at 4 – 6 Niangala Close, Belrose, (Lot 1 DP1104786) (the Site).

The Site is zoned B7 Business Development pursuant to the *Warringah Local Environmental Plan 2011* (WLEP2011) and is located within the Northern Beaches Local Government Area (LGA). The proposed development is permissible with consent within the B7 Business Development zone as an additional permitted use pursuant to Clause 3 of Schedule 3 of the WLEP2011 and is considered contextually appropriate. The proposal is generally consistent with the objectives and provisions of WLEP2011, with the exception of Clause 4.3 – Height of Buildings, for which this Variation Request is sought.

This Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards prescribed under WLEP2011. It considers various planning controls, strategic planning objectives and existing characteristics of the Site, and concludes that the proposed building height, despite the non-compliance, is the best means of achieving the objectives of encouraging orderly development of the Site under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

**1.2 RATIONALE FOR VARIATION FROM DEVELOPMENT STANDARDS**

This Variation Request has been submitted to assess the proposed non-compliance with Clause 4.3 – Height of Buildings of WLEP2011 and has been prepared in accordance with the requirements of Clause 4.6 of WLEP2011 which includes the following objectives:

- (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.

Under the provisions of Clause 4.3 of WLEP2011, the Site is subject to a maximum building height of **11m**; however, the existing building is **constructed to a maximum building height of 19.2m**. This proposal comprises built form which ranges up to 19m in height; this is within the building height range as approved under **DA2014/1369**.

The development in its proposed built form and scale will provide Large Format Retail (LFR) GFA to an established specialised retail location. In addition, the development's form and scale complement the pattern of development.

The non-compliance will not have an adverse impact on the surrounding locality and is a direct result of the existing slope of the Site. The built form is compatible and accords with the prevailing pattern of development of the Belrose Supa Centre which contains an existing roof extension (approved under



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**DA2014/1369** which is setback from the parapet of the façade and is not materially viewable from the streetscene along Forest Way.

The scale of the works proposed need to be assessed having regard to the established height and scale of the existing building. To that extent there is no increase in height beyond that already established on site and the works have been designed to provide for an integrated outcome to the established facility

**1.3 DEVELOPMENT STANDARD VARIATION**

Under the provisions of Clause 4.3 of WLEP2011, the Site is subject to a maximum building height of **11m**. The proposal will result in a building height of **up to 19.27m (already approved) with built form under this variation up to 19m**. **Table 1** below provides a summary of the variation.

<b>TABLE 1: CLAUSE 4.3 OF WLEP2011 VARIATION SUMMARY</b>			
<b>WLEP2011 Clause</b>	<b>WLEP2011 Development Standard</b>	<b>Minimum Setback Proposed</b>	<b>Proposed Development Non-Compliance</b>
Clause 4.3 – Height of Buildings	Maximum height of 11m	6.1m from the parapet	The proposal seeks consent for a maximum building height of 19m which is a 72% variation from the development standard. However, the development standard has already been exceeded by 75% pursuant to <b>DA2014/1369</b> .

The proposed development represents the most efficient use of the Site and responds to the existing environmental constraints in comparison to a compliant building height development.

Accordingly, this Clause 4.6 variation to building height seeks to extend the extension which was approved under **DA2014/1369**; it does not seek to add further height than what has already been approved. the built form of the extension will maintain the building setback from the parapet of the façade accord with the existing pattern of development at the Site.



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**PART B THRESHOLDS THAT MUST BE MET****2.1 INTERPRETING CLAUSE 4.6**

Clause 4.6 of WLEP2011 facilitates exceptions to strict compliance with development standards in certain circumstances. Clause 4.6(3) states (our emphasis added):

*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.*

In addition, Clause 4.6(4) states that (our emphasis added):

*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.*

Further to the above, Clause 4.6(5) states the following (our emphasis added):

*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.*

Accordingly, a successful Clause 4.6 variation must satisfy three limbs explained below:

First Limb – cl 4.6(4)(a)(i)



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Clause 4.6(4)(a)(i) provides that the consent authority must be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

These are as follows:

- a. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Cl 4.6(3)(a)); and
- b. that there are sufficient environmental planning grounds to justify contravening the development standard (Cl 4.6(3)(b)). To this end the environmental planning grounds advanced in the written request must justify the contravention, not simply promote the benefits of carrying out the development as a whole: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15].

In the decision of *Rebel MH v North Sydney Council* [2019] NSWCA 130 (**Rebel**) Payne JA held (our emphasis added):

*"Although it was unnecessary finally to decide the correct construction of cl 4.6(4) in Al Maha, I agree with the construction advanced in that case by Basten JA, with whom Leeming JA agreed, at [21]-[24]. **Properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).** Clause 4.6(3) requires the consent authority to have "considered" the written request and identifies the necessary evaluative elements to be satisfied. To comply with subcl (3), the request must demonstrate that compliance with the development standard is "unreasonable or unnecessary" and that "there are sufficient environmental planning grounds to justify" the contravention. It would give no work to subcl 4.6(4) simply to require the consent authority to be satisfied that an argument addressing the matters required to be addressed under subcl (3) has been advanced."*

Accordingly, the consent authority must be satisfied that this Variation Request demonstrates that both compliance is unreasonable or unnecessary in the circumstances of the case and sufficient environmental planning grounds exist to justify the breach of the height control by the proposed development.

The matters identified in the First Limb are addressed in **Sections 4.3** and **4.4** of this Variation Request.

Second Limb – clause 4.6(4)(a)(ii)

Clause 4.6(4)(a)(ii) provides that the consent authority must be satisfied that the proposed development will be in the public interest because it is consistent with:

- a) the objectives of the particular development standard; and
- b) the objectives for development within the zone in which the development is proposed to be carried out.

The matters identified in the Second Limb addressed in **Sections 4.1 4.2** and **4.6** of this Variation Request.

Third Limb – clause 4.6(4)(b)



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Clause 4.6(4)(b) requires that concurrence of the Secretary of the NSW Department of Planning, Industry and Environment has been obtained.

Clause 4.6(5) outlines the matters to be considered by the Planning Secretary in deciding whether to grant concurrence.

The matters identified in the Third Limb are addressed in **Sections 4.7** and **4.8** of this Variation Request.



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**PART C STANDARDS BEING OBJECTED TO****3.1 OVERVIEW**

The Site is zoned B7 Business Development and is subject to the underling objectives of the varied standard.

**3.2 CLAUSE 4.3 – HEIGHT OF BUILDINGS UNDER WLEP2011**

Clause 4.3 of WLEP2011 identifies the following objectives:

- (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,*
  - (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
  - (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
  - (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities*

Pursuant to Clause 4.6, the proposal seeks exception to the maximum permissible Height of Building of 11m.

**3.3 PROPOSED VARIATION TO DEVELOPMENT STANDARDS**

The DA seeks approval for the proposed alterations and additions to an existing residential dwelling (Proposal) at 4 – 6 Niangala Close, Belrose (Lot 1 DP1104786). The Site is subject to a maximum building height of 11m. The development proposes a maximum building height of up to **19m** (noting that the maximum height of the building as **existing is 19.27m**) according, this variation does not seek to increase the maximum height as already approved, however, it seeks to include additional built form over the 11m approved height and below the 19.27m as existing.

It is noted that the works proposed need to be assessed having regard to the established height and scale of the existing building. To that extent there is no increase in height beyond that already established on site and the works have been designed as commensurate with the existing scale and built form of the existing building.

The height of the existing building already exceeds the height standard contained within the WLEP11. The initial assessment report for the development of the Supa Centre site noted that the height was not antipathetic to the height and scale of buildings within the Austlink Park; it avoided the need for non productive site excavation and by concentrating development towards the southern portion of the site



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which enabled the conservation of Duffys Forest vegetation at the intersection of Mona Vale Road and Forest Way.

Given the absence of compliance of the current development with the height standard of the WLEP2011 the increase in building height proposed by this application, of itself provides no precedent. Compliance with the height of building control is not possible.

Notwithstanding the Austlink locality due to its topography and associated with individual characteristics of several developed sites includes instances of variation to the height standard. Within the context of the height and scale of the existing building and that of surrounding buildings the variation is considered to be minor and appropriate and without detriment to the objectives that underpin the zoning of the land or of the height control.

Therefore in consenting to the original development exceeding the 11m height standard, it is no longer possible for the development to conform to the standard of the WLEP2011.



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**PART D PROPOSED VARIATION TO STANDARDS IN CLAUSE 4.3 OF WLEP2011**

Clause 4.6(4)(a)(ii) requires that a request to vary a development standard must establish that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the zone. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018]NSWLEC 118 at 27

Importantly, the word consistent has been interpreted as 'compatible' or 'capable of existing in harmony'. *Kingsland Developments Australia Pty Ltd City of Parramatta Council* [2018]NSWLEC 1241 at 20.

**4.1 OBJECTIVES OF THE STANDARD**

A key determinant of the appropriateness of a Clause 4.6 Variation to a development standard is the proposal's compliance with the underlying objectives and purpose of that development standard.

Clause 4.3 of WLEP2011 sets out specific objectives with regards to height. Those objectives under WLEP2011 are responded to below in **Table 2**:



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TABLE 2: CONSISTENCY WITH THE CLAUSE 4.3 OBJECTIVES	
Objective	Response
<p><i>to ensure that buildings are compatible with the height and scale of surrounding and nearby development,</i></p>	<p>The proposed development, by virtue of its height, is consistent with the prevailing pattern of development within the Austlink Business Park.</p> <p>The built accords with the established built form at the Site comprising a 6.1m setback from the parapet of the front façade inline with the existing rooftop development.</p> <p>The proposed development is of a design and form consistent with the prevailing pattern of development and will not result in adverse impacts on the locality when viewed from the public domain.</p> <p>The initial assessment report for the development of the Supa Centre site noted that the height was not antipathetic to the height and scale of buildings within the Austlink Park and thus given this proposal does not seek to increase the height its impact on the character and locality of the area will not be impacted upon.</p> <p>The proposed development is consistent with the height and scale of the existing development and prevailing pattern of development.</p> <p>This extension to the rooftop addition to the building does not seem to add additional height to the Site. furthermore, it is noted that any additional bulk will be in accordance with the prevailing pattern of development at the Site. - the built form will accord with the established building setbacks and is located in a position as to not be materially viewable from the streetscene.</p>
<p><i>to minimise visual impact, disruption of views, loss of privacy and loss of solar access</i></p>	<p>As demonstrated in the architectural plans submitted with the Development Application (DA), the proposed development will not result in any unreasonable overshadowing impacts surrounding the Site.</p>
<p><i>to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,</i></p>	<p>The proposed development has appropriately considered the slope of the Site to and has been designed to ensure the built form responds to the natural topography and minimises impacts to the surrounding properties.</p> <p>The site has been identified as partially being sloped &lt;5° (Area A) and partially containing flanking slopes of 5° to 25° (Area B) on the Landslip Risk Map, the proposal would not alter the existing topography of the site. Therefore, no changes to the risk of landslides or stormwater discharged are anticipated.</p> <p>The development of the Site over the 11m height control avoids the need for non-productive site excavation; concentrating development towards the southern</p>



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TABLE 2: CONSISTENCY WITH THE CLAUSE 4.3 OBJECTIVES	
Objective	Response
	portion of the site which enabled the conservation of Duffys Forest vegetation at the intersection of Mona Vale Road and Forest Way.
<i>to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.</i>	<p>A Visual Impact Assessment has been prepared by Geoscapes with the aim of evaluating and assessing the potential visual impacts of the proposed development on its surroundings. The assessment takes into account the viewpoints of the project from various angles and distances, and evaluates the potential impact on the landscape, cultural heritage, and visual amenity of the area.</p> <p>When assessing the visual impact of a proposed development on the surrounding views, several factors were considered, including the size, shape, color, and location of the development. The assessment identifies and evaluates the visual changes that may occur in the area as a result of the development.</p> <p>The VIA concludes that the resultant development would have:</p> <ul style="list-style-type: none"> <li>- No impact when viewed from viewpoint 1</li> <li>- A negligible impact when viewed from viewpoint 2;</li> <li>- A minor impact when viewed from viewpoint 3;</li> <li>- A moderate / minor impact when viewed from viewpoint 4.</li> </ul> <p>The assessment considers the location and scale of the proposed development in relation to Viewpoint 4. It is noted that the Site is set within Bushland and the visual impact is limited to the additional bulk to the rooftop. It is noted the extension is of the same scale as the existing building and the bulk is setback from the parapet as to not appear over-dominant and/or overbearing.</p> <p>As setout throughout this Clause 4.6, the height limit is breached on account of the levels of the Site which slope away from Forest Way.</p> <p>The building draws its character from the blocked built form of the existing façade and this extension seeks to continue the prevailing architectural language of this building within the setting.</p>

**4.2 OBJECTIVES OF THE ZONE**



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The Site is zoned B7 Business Development pursuant to WLEP2011. Therefore, consideration has been given to the B7 zone objectives in **Table 3** below:

<b>TABLE 3: CONSISTENCY WITH THE B7 BUSINESS DEVELOPMENT ZONE OBJECTIVES</b>	
<b>Objective</b>	<b>Response</b>
<i>To provide a range of office and light industrial uses.</i>	The development relates to the existing Supa Centre site which comprises Large Format Retail (LFR) which was approved under previous consents. The use of the Site as LFR (included within the definition of Specialised Retail) is permitted at the Site as an additional permitted use; as such the land use is consistent with the objective.
<i>To encourage employment opportunities</i>	The use of the Site as LFR is permitted at the Site as an additional permitted use and provides retail and employment opportunities; as such the land use is consistent with the objective.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.</i>	The land use as LFR is not inconsistent with this objective.
<i>To create business park employment environments of high visual quality that relate favourably in architectural and landscape treatment to neighbouring land uses and to the natural environment</i>	The development to the rooftop extension is such that it seeks to avoid development of Duffys Forest vegetation at the intersection of Mona Vale Road and Forest Way.
<i>To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of adjoining or nearby residential land uses.</i>	The development to the rooftop is within the footprint of the existing building and will be setback from the parapet of the façade as to not materially impact on the prevailing built form or pattern of development at the Site.

**4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY**

Subclause 4.6(3)(a) and the judgement in *Four2Five Pty Ltd v Ashfield Council* (refer to **Section 2.1**) emphasise the need for the proponent to demonstrate how the relevant development standard is unreasonable or unnecessary in the circumstances.

In view of the particular circumstance of this case, strict compliance with Clause 4.3 of WLEP2011 cannot be achieved and is considered to be both unnecessary and unreasonable. Should strict compliance with the development standard be enforced, the proposed development would be constrained in improving the development potential of the existing Supa Centre. The non-compliance is not likely to have an adverse impact on the area and simply seeks to extend the existing built form in a pattern consistent with the existing development. The proposed non-compliance seeks to accommodate additional built form which is commensurate in height and scale with the surrounding pattern of development within the Austlink Business Park.



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In accordance with the Court's findings in *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) the way to establish that compliance with the development standard is unreasonable or unnecessary is because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

We have set out above a detailed assessment against the objectives of the development standard and adopted the first test in *Wehbe* to establish that compliance is unreasonable or unnecessary because the objectives of the height controls are satisfied notwithstanding the variation.

The proposal does not conflict with the intent of the development standard and zone objectives as demonstrated above, notwithstanding the proposed numeric variation. The proposal is consistent with the objectives of the B7 Business Development.

The abovementioned justifications are considered valid, and in this instance the proposed Clause 4.6 Variation is considered to be acceptable. The proposed development represents a more efficient use of the Site. The objectives of the relevant clause, B7 Business Development zone are met by the proposed development.

Furthermore, the height of building control at the Site has already been breached and the built form proposed accords with the prevailing setback from the parapet of the façade. Accordingly, the application of the height of buildings development standard is therefore unreasonable and unnecessary in response to the proposed development.

**4.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD**

The Variation Request is considered well founded because, notwithstanding the proposed non-compliance with the maximum permitted building height:

- The proposal is entirely consistent with the underlying objectives and purposes of the standard, as demonstrated in Section 4.1
- The proposal is entirely consistent with the underlying objective or purpose of the B7 Business Development zone, as demonstrated in **Sections 4.2 and 4.3;**
- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in **Section 4.3;**



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- The proposed non-compliance results in a built form and land use, which is permitted at the Site.
- The proposal is consistent with the desired future character of the Site within the surrounding locality and generally complies with the relevant built form controls;
- The proposal has been designed to be sympathetic and respectful to the existing surrounding amenity and local character, particularly regarding visual bulk, privacy and overshadowing whilst expanding on the existing functional residential building Site.

For the reasons outlined above, it is considered that the variation to the height of buildings control under Clause 4.3 is appropriate and can be clearly justified having regard to the matters listed within clause 4.6(3)(b) under WLEP2011.

**4.5 OBJECTIVES OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

All planning determinations made under the EP&A Act are required to be made with regard to the objects of the Act in accordance with section 1.3 of the EP&A Act. **Table 4** below assesses the proposed development against the objects of the EP&A Act.



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<b>TABLE 4: EP&amp;A ACT OBJECTIVES</b>	
Objective	Response
<i>(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,</i>	The proposal will positively contribute to the specialised retail use on the Site within the Northern Beaches LGA. The proposal can furthermore be progressed without any significant environmental impacts.
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i>	The proposal avoids the need for non productive site excavation and by concentrating development towards the southern portion of the site which enabled the conservation of Duffys Forest vegetation at the intersection of Mona Vale Road and Forest Way.
<i>(c) to promote the orderly and economic use and development of land,</i>	The proposal allows for the development of the Site in accordance with the objectives of B7 Business Development zone pursuant to WLEP2011.
<i>(d) to promote the delivery and maintenance of affordable housing,</i>	The proposal will not impact the delivery and maintenance of affordable housing.
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i>	The proposed development has been sited, resulting in minimal impacts on the surrounding environment.
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	The existing Site is not identified as a Heritage Item, within a heritage conservation area or as containing Aboriginal or cultural heritage significance. The proposal will not impact any Aboriginal or cultural heritage significance of the surrounding land.
<i>(g) to promote good design and amenity of the built environment,</i>	The proposal will be constructed out of complementary materials to the existing rooftop extension and will be setback from the parapet of the façade.
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	The proposal can be constructed and maintained without health and safety risks to future tenants.
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i>	The DA is required to be determined by Northern Beaches Council.
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The DA is subject to the relevant public notification requirements.



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**4.6 PUBLIC INTEREST**

Clause 4.6(4)(a)(ii) requires the proposal to 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.

**Sections 4.1** and **4.2** above demonstrate how the proposal is consistent with the objectives of the development standards, as well as the B7 zone objectives under WLEP2011.

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 proposal provides the following public benefits:

- Providing employment-generating opportunities to the region during both the construction and operational phases of the proposal;
- Supporting retail uses within the Belrose locality through the provision of services and facilities that meet the day to day needs of the workers in the area; and
- Facilitating the operation of the building which supports the use of the site as a bulky goods centre.

There are no identifiable public disadvantages which will result from the proposal in terms of amenity impacts on adjoining uses and streetscape or environmental impacts on the locality.

The proposal is considered to be in the public interest.

**4.7 MATTERS OF STATE AND REGIONAL SIGNIFICANCE**

The non-compliance with Clause 4.3 of WLEP2011 does not give rise to any matters of significance for the State or regional environmental planning. The non-compliance does also not conflict with any State Environmental Planning Policies or Ministerial Directives under section 9.1 of the EP&A Act.

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 full Council rather than under delegation. It is noted that this variation does not seek to increase the height of the building above the existing building height.



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#### 4.8 PUBLIC BENEFIT IN MAINTAINING THE STANDARD

Strict compliance with Clause 4.3 of WLEP2011 will result in:

- Providing a less efficient development which would result in the contrived development of the Site; and
- Preventing the Site being developed to its full potential.

As such, there is no genuine or identifiable public benefit to be achieved in maintaining the height of building development standard for the Site. furthermore, the height of building control has already been breached under development consent **DA2014/1369**.

#### 4.9 SUMMARY

For the reasons outlined above, it is considered that the variation to Clause 4.3 of WLEP2011 is well-founded and appropriate in the circumstances. Furthermore, the Variation Request is considered to be well-founded for the following reasons as outlined in Clause 4.6 of WLEP2011, *Four2Five Pty Ltd v Ashfield Council* and *Wehbe v Pittwater Council*:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances (refer to **Section 4.3** as part of the First Limb satisfied);
- There are sufficient environmental planning grounds to justify contravening the development standard (refer to **Section 4.4** as part of the First Limb satisfied);
- The development is in the public interest (refer to **Section 4.6** as part of the Second Limb satisfied);
- The development is consistent with the objectives of the particular standard (refer to **Section 4.1** as part of the Second Limb satisfied);
- The development is consistent with the objectives for development within the zone and long term strategic intentions to provide employment generating land use (refer to **Section 4.2** as part of the Second Limb satisfied);
- The development does not give rise to any matter of significance for the State or regional environmental planning and is consistent with the visions and objectives of the relevant strategic plans (refer to **Section 4.7** as part of the Third Limb satisfied);
- The public benefit in maintaining strict compliance with the development standard would be negligible (refer to **Section 4.8** as part of the Third Limb satisfied); and
- The objectives of the standard are achieved notwithstanding the non-compliance with the standard.

Overall, it is considered that the variation to the height of building development standard is appropriate and is justified having regard to the matters listed within Clause 4.6 of WLEP2011.



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**PART E CONCLUSION**

For the reasons outlined above, it is requested that Council support the Variation Request, which seeks approval for non-compliance with Clause 4.3 of WLEP2011 for the following reasons:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case;
- There are sufficient environmental planning grounds to justify contravening the development standards;
- The Proposal will capitalise on the Site's full planning potential;
- The Proposal satisfies the objectives of the B7 Business Development zone and Clause 4.3 of WLEP2011;
- No unreasonable environmental impacts are introduced as a result of the proposal; and
- There is no public benefit in maintaining strict compliance with the standards.

Council should be satisfied that the Variation Request has addressed and meets the requirements of clause 4.6 and should be favourably considered by Council.



## 5.0 NON PUBLIC MEETING ITEMS

ITEM 5.1	DA2023/0304 - 87 BLACKBUTTS ROAD, FRENCHS FOREST - DEMOLITION WORKS, AND THE CONSTRUCTION OF FOUR SENIORS HOUSING DWELLINGS AND ASSOCIATED WORKS.
AUTHORISING MANAGER	Rod Piggott
TRIM FILE REF	2023/428050
ATTACHMENTS	1 <a href="#">↓ Assessment Report</a> 2 <a href="#">↓ Site Plan &amp; Elevations</a> 3 <a href="#">↓ Clause 4.6</a> 4 <a href="#">↓ Design and Sustainability Advisory Panel Report</a>

### PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a non-numerical development standard and the development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies.

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### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, permits a contravention of SEPP (Housing) 2021 development standards 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. DA2023/0304 for Demolition works, and the construction of four seniors housing dwellings and associated works. on land at Lot 2413 DP 752038, 87 Blackbutts Road, FRENCHS FOREST subject to the conditions set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/0304
<b>Responsible Officer:</b>	Maxwell Duncan
<b>Land to be developed (Address):</b>	Lot 2413 DP 752038, 87 Blackbutts Road FRENCHS FOREST NSW 2086
<b>Proposed Development:</b>	Demolition works, and the construction of four seniors housing dwellings and associated works.
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Khosrow Ataii Mojgan Ataii
<b>Applicant:</b>	85 Bb Pty Ltd
<b>Application Lodged:</b>	31/03/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Seniors Living
<b>Notified:</b>	11/04/2023 to 25/04/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	3
<b>Clause 4.6 Variation:</b>	'Minimum site area' under Clause 84(2)(a) of <i>State Environmental Planning Policy (Housing) 2021</i> : 6.2%  Clause 85(1) Schedule 4, Clause 17 'Access to kitchen, main bedroom, bathroom and toilet' of <i>State Environmental Planning Policy (Housing) 2021</i> : 25%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 1,570,960.64

### EXECUTIVE SUMMARY

Development consent is sought for demolition works and construction of a seniors housing development comprising of four (4) dwellings. The provisions of *State Environmental Planning Policy (Housing) 2021 (SEPP (Housing)) 2021* are applicable to this application.

The application is referred to the Northern Beaches Local Planning Panel (**NBLPP**) due to the development breaching the 'Access to kitchen, main bedroom, bathroom and toilet' non-numerical

development standard under SEPP (Housing) 2021. A further written breach to a development standard that is supported by a written Clause 4.6 request has also been lodged for the variation to the 'minimum site area' development standard under SEPP (Housing) 2021. The minimum required site area is 1000sqm, and the proposal presents a lot size of 938sqm, a variation of 6.2% (61.9sqm).

The written Clause 4.6 request for the non-compliance with the '*Access to kitchen, main bedroom, bathroom and toilet*' development standard under SEPP (Housing) 2021 arises as a result of the development which does not provide for a bedroom on the same level as the entry to the dwelling. This non-compliance arises simply from the proposal to include 4 dwellings on the site, however the design incorporates an internal lift which is not generally required for this form of development to compensate for locating no bedrooms on the ground floor providing for equitable access to bedrooms.

The written Clause 4.6 request for the non-compliance with the '*minimum site area*' standard under SEPP (Housing) 2021 arises from the development presenting a bulk and scale which is consistent with the area when viewed from the public domain. The proposed lot size is otherwise consistent with the established, existing subdivision pattern in the locality, and as such the proposal has demonstrated through a detailed written Clause 4.6 written request that variation to the development standard is considered appropriate as compliance with the development standard is unreasonable in the circumstances of the case, and there are sufficient environmental planning grounds to justify contravening the development standard.

Three (3) objections were received in response to the proposal, with concerns raised in regard to suitability of the proposal, amenity and built form non-compliance. A detailed assessment has been conducted and the matters raised in the submissions have been addressed in detail, and no matters were found to warrant the refusal of the subject application.

This report concludes with a recommendation that the NBLPP should grant **approval** to the application, subject to the conditions attached to this report.

### PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for demolition works and construction of a 4 dwelling (independent living units) seniors housing development, pursuant to SEPP (Housing) 2021.

The works incorporate the following:

- Demolition of an existing dwelling house and structures; and
- Construction of a two-storey seniors housing development comprising of:
  - i 3 x self-contained three-bedroom dwellings, each with double garages.
  - i 1 x self-contained two-bedroom dwellings, with double garage.
  - i Driveway; and
- Supporting waste storage, stormwater and landscaping works.

### AMENDED PLANS

An amended set of plans (dated 28 June 2023) were lodged with Council on 4 July 2023. The amended were limited to internal alterations to the dwelling closest to the street (TH1). The amended plans does not increase environmental impacts. Therefore, re-notification was not required in accordance with Northern Beaches Community Participation Plan.

### ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning

and Assessment Act 1979 and the associated Regulations. In this regard:

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

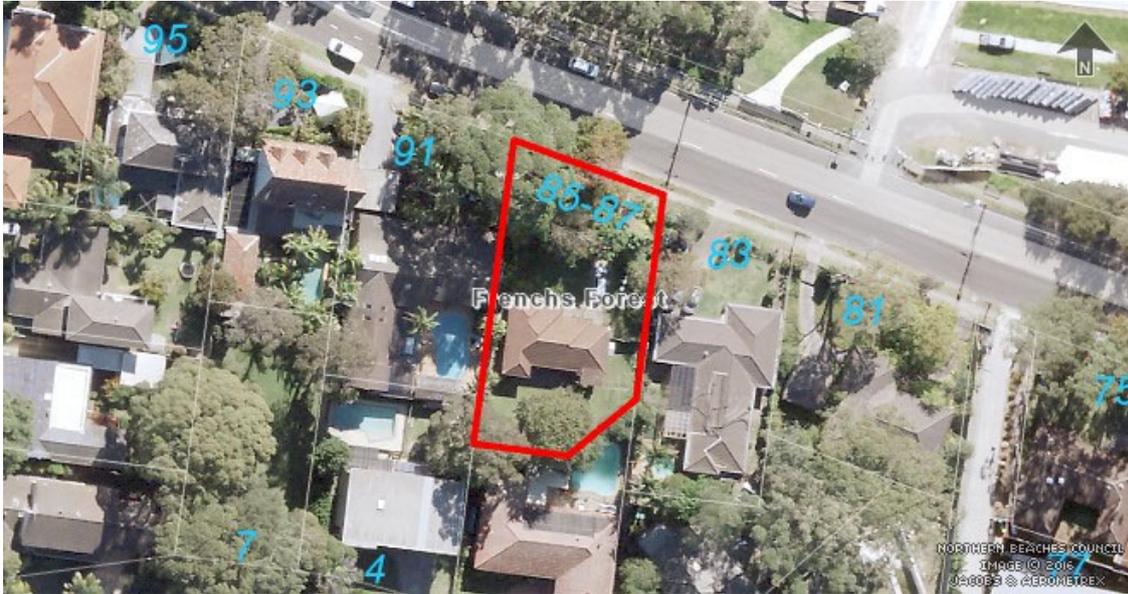
#### SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks  
 Warringah Development Control Plan - B9 Rear Boundary Setbacks  
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

#### SITE DESCRIPTION

<b>Property Description:</b>	Lot 2413 DP 752038 , 87 Blackbutts Road FRENCHS FOREST NSW 2086
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the southern side of Blackbutts Road.</p> <p>The site is irregular in shape with a frontage of 23.595m along Blackbutts Road and a maximum depth of 45.39m. The site has a surveyed area of 938.1m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a single storey detached dwelling house.</p> <p>The site is relatively level and contains a variety of small to large vegetation.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by one- and two-storey detached dwelling houses to the east, west and south, Glenrose Village Shopping Centre and Glen Street Theatre to the north-west, and Lionel Watts Reserve to the north and north-east.</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:

**DA2020/0341** approved a 3 dwelling seniors housing development on the site, pursuant to *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Repealed)*.

The approval included:

- Demolition of an existing dwelling house and structures; and
- Construction of a two-storey seniors housing development comprising of:
- 3 x self-contained three-bedroom (with study) dwellings, each with attached double garages.
- Driveway; and
- Supporting waste storage, stormwater and landscaping works.



**Figure 1 – Approved site plan (DA2020/0341)**



**Figure 2 – Approved ground floor plan (DA2020/0341)**

This approval, whilst active has not been constructed and works have not physically commenced. In comparing the approved scheme against the current proposal, the design remains similar with changes to massing at ground and first floor level, however generally the bulk and scale remains largely the same, noting the general compliance with the relevant built form controls under the WDCP 2011. The approved development included a variation to the rear setback control being setback 3m from the rear property boundary. The current application, while still non-compliant, reduces the overall extent of the variation increasing the setback from 3m - 3.75m.

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

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

<b>Section 4.15 Matters for Consideration</b>	<b>Comments</b>
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iia) – 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&amp;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&amp;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&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Design and Sustainability Advisory Panel comments.</p> <p><u>Clause 61</u> of the EP&amp;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&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;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&amp;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) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>

	<b>(iii) Economic Impact</b> The proposed development will / 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 11/04/2023 to 25/04/2023 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 David Michael Greenwood	91 Blackbutts Road FRENCHS FOREST NSW 2086
Tony Marinovic	6 Kalgal Street FRENCHS FOREST NSW 2086
Steven John Davies	4 Kalgal Street FRENCHS FOREST NSW 2086

The following issues were raised in the submissions:

- **DCP and SEPP (Housing) 2021 non-compliance**
- **Inappropriate use**
- **Construction impacts on adjoining properties**
- **Privacy**
- **Boundary fencing**

The above issues are addressed as follows:

- **DCP and SEPP (Housing) 2021 non-compliance**

The submissions raised concerns that the proposal is an overdevelopment of the site, siting non-compliance with the SEPP (Housing) 2021 controls.

Comment:

The proposed development is generally consistent with the development standards under the WLEP 2011 and requirements of Warringah DCP 2011 (WDCP) 2011. Consistency with these controls indicates that the proposed development is suitable for this site. While there are areas of non-compliance with regard to minimum lot size under SEPP (Housing) 2021, the breach is minor and acceptable on merit when considered against the underlying objectives of the SEPP and the extent of previously approved development.

- **Inappropriate use**

Concern has been raised in regard to the suitability of a seniors within Frenches Forest and R2 Low Density Residential Zone generally.

Comment:

Senior's housing is a permitted use in the R2 Low Density Residential zone and the proposal meets the requirements of SEPP (Housing) 2021 in terms of being within 400m of a regular bus service and local centre. Therefore, the proposal cannot be refused in this regard.

- **Construction impacts on adjoining properties**

The submissions raised concerns that the proposed development will have an unreasonable impact on neighbouring properties during construction.

Comment:

The significant development of any site will undoubtedly cause disruption to adjoining properties. In order to reduce the potential disruption, standard conditions have been included as part of recommendation to ensure compliance with the relevant Australia standards and to allow for respite for neighbouring properties by imposing set construction hours.

- **Privacy**

Concern was raised by neighbouring properties in regard to the potential overlooking between the subject site and adjoining properties.

Comment:

The proposal has been assessed against the privacy provisions under SEPP (Housing) 2021. In summary, subject to conditions suitable privacy will be retained between buildings.

- **Boundary Fencing**

The submission raises concern about proposed boundary fencing.

Comment:

Boundary fences are generally subject to the *Dividing Fences Act* 1991 NSW. As stated Act boundary fences are a civil matter between neighbours and is subject to an agreement between neighbours. No owners consent has been given by the adjoining property owner and as such,

no consent is given for any boundary wall/fence. A condition of consent has been imposed as part of the recommendation reflecting this.

## REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	<p><b>Supported (subject to specific recommendations)</b></p> <p>The application was presented to the DSAP on 25 May 2023. The Panel generally indicated support for the proposal, subject to the following comments and recommendations:</p> <p><b>"General</b></p> <p><i>Council advice at pre lodgement was that the application is seeking to largely replicate the building footprint of the approved development of DA2020/0341 and notes that given general compliance with the non- discretionary provisions of SEPP Housing 2021 and similar envelope, this would justify the additional dwelling on site.</i></p> <p><i>The Panel has taken into consideration the non-compliances in the existing approval in the rear setback and in the side boundary envelope controls.</i></p> <p><b>Strategic context, urban context: surrounding area character</b></p> <p><i>The proposal is an improvement on the existing approval. The first-floor plan in the approved development was configured in one contiguous form whereas the current proposal better articulates the first floor as three separate masses. The Panel was of the view that the current proposal is a more appropriate response to the existing neighbourhood character.</i></p> <p><b>Scale, built form and articulation.</b></p> <p><i>The scale and built form are considered acceptable in the context of the existing approval being a benchmark.</i></p> <p><b>Access, vehicular movement and car parking</b></p> <p><i>The driveway/residential entry path needs to be considered as a landscaped element.</i></p> <p><b>Recommendation</b></p> <p>1. Refer Landscape and Façade treatment, aesthetics.</p> <p><b>Landscape</b></p> <p><i>The landscape plan presented to the Panel takes into several of the</i></p>

	<p><i>Panel's previous recommendations.</i></p> <p><b>Recommendations</b></p> <p>2. <i>TH4 courtyard should have a <i>Elaeocarpus reticulatus</i> as per the other units.</i></p> <p>3. <i>The Panel recommends that the OSD garden associated with TH1 have a step or ramp access into the basin space in order to maximise the use of outdoor areas for residents. To achieve this, it is suggested that a suitable turf species be used in lieu of extensive sedges and rushes as currently specified.</i></p> <p>4. <i>The Panel recommends that the landscape plans indicate a trellis system on the Eastern boundary wall that could support evergreen vines as specified. As noted in the Façade treatment / aesthetics.</i></p> <p>5. <i>The Panel highly recommend the inclusion of an arbour structure with appropriate climbing species to improve the visual experience of the constrained driveway space and to provide shade.</i></p> <p>6. <i>The Panel recommend that the proposed hedge species on the Western, Southern, and Northern boundary be substituted for a native species such as Lilli Pilli that can grow to a height above 1.8m in order to provide a good evergreen native screen.</i></p> <p>7. <i>T1. Mature Broad-leaved Paperbark. Building footprint slightly encroaches the structural rootzone. Arborist to specifically address the requirements for protection during construction to ensure the tree remains viable.</i></p> <p><b>Amenity</b></p> <p><i>The Panel notes recommendations for living room skylights has been accepted. Living rooms spaces are long and narrow in proportion. The vista through living spaces from the entry to a blank wall with a highlight window is not supported.</i></p> <p><i>The opportunity exists to provide windows with sun hoods to the north facades of upper bedroom and upper living room windows to improve passive solar design and improved natural cross ventilation.</i></p> <p><i>The Panel notes that 15 rooms are to have dedicated air conditioning and the location of condenser units has not been addressed.</i></p> <p><b>Recommendations</b></p>
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	<p>8. Provide a full height glazed return to the Living Room north facing window wall so that a vista to outside is achieved at the entry point. Ensure landscape screen planting or privacy screens are provided to the window return to prevent side boundary overlooking to neighbour's private open space.</p> <p>9. Increase the width of living spaces to the maximum possible by reducing the bedroom width to the minimum possible. i.e., 1.2m from the foot of the bed to robe. Reduce the length of the Living room to maintain current FSR. This will increase side boundary setbacks and landscape screening areas slightly.</p> <p>10. Provide windows with sunhoods to upper rooms with north facades.</p> <p>11. The drawings should identify the location of all condenser units for air conditioning/hot water. The location should not be in private open space or areas where it will affect the amenity of adjoining dwellings or areas visible from the public domain or the shared entry space. Enclosures should be integrated into the existing building envelope and should not be roof mounted.</p> <p><b>Façade treatment/Aesthetics</b></p> <p>The façade to the driveway shared entry zone reads as a wall of garage doors.</p> <p><i>Recommendations</i></p> <p>12. Ensure the garage doors are high quality natural finishes such as timber sectional lift doors.</p> <p>13. Reduce the width of each garage doors to approximately 3.8m. This will allow adequate access for bikes and wheelchairs to the garage while a car is parked.</p> <p>14. Provide planted trellises for creepers across the driveway to create a garden character to the shared entry space.</p> <p><b>Sustainability</b></p> <p>The revised design will require the BASIX to be updated.</p> <p>The BASIX Certificate indicates gas instantaneous which is not recommended. Note that BASIX has updated its greenhouse gas emissions factors and the calculations associated with heat pumps and (induction cooktops).</p> <p>The use of PV to offset BASIX Energy in TH4 is commended.</p>
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	<p><i>The Panel notes that NCC 2022 requires new Class 1a dwellings built after October 1, 2023, must have at least a 7-star NatHERS rating.</i></p> <p><i>The applicant has stated they are not obliged to adopt the sustainability recommendations set out in the previous report. However, some of these are zero or minimal cost (e.g., ceiling fans) and others may be required to meet BASIX (e.g. the PVs).</i></p> <p><i>Therefore, it is recommended that the applicant provides a more reasonable approach to demonstrate their consideration of sustainability initiatives, and the Panel's previous recommendations still apply:</i></p> <p><i>Recommendations</i></p> <p><i>15. Confirm 7-star NatHERS is achieved for each dwelling.</i></p> <p><i>16. All services should be electric – gas for cooking, hot water and heating should be avoided.</i></p> <p><i>17. Heat pump systems for apartments or other ways of providing electric hot water should be considered.</i></p> <p><i>18. The storage of hot water can be considered a de facto battery if heated by PVs during the day.</i></p> <p><i>19. Provide ceiling fans to all bedrooms and living rooms.</i></p> <p><i>20. Provide outdoor drying areas for each dwelling.</i></p> <p><i>21. Onsite power generation and battery storage. On site battery storage has benefits for the grid and may be a highly desirable back- up during the transition to a de-carbonised grid.</i></p> <p><i>22. Unshaded roof space is a valuable resource for PV installations.</i></p> <p><i>23. Provide PV solar as per TH4 to all other dwellings to offset electrical loads.</i></p> <p><i>24. EV charging: Provide EV charging points for each unit (Min 15 amp) to suit level 1 charging.</i></p> <p><i>25. Passive design and thermal performance of building fabric.</i></p> <p><i>26. The Panel notes that higher energy standards are under consideration by the Department of Planning in the document 'BASIX Higher Standards- Proposed changes for feedback'. Available here</i></p>
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	<p><a href="https://pp.planningportal.nsw.gov.au/draftplans/under-consideration/basix-higher-standards">https://pp.planningportal.nsw.gov.au/draftplans/under-consideration/basix-higher-standards</a>.</p> <p>27. The Department advises that the higher BASIX thermal performance standards will be at least average 7 stars NatHERS rating system and minimum 6 stars any dwelling. This consistent with what the Federal Government proposes for the National Construction Code for 2022. Given the coastal location a very comfortable indoor environment should be achievable.</p> <p><b>Panel conclusion</b></p> <p><i>The Panel supports the proposal subject to the recommendations above being incorporated."</i></p> <p><b>PLANNER COMMENT</b></p> <p>As noted in the panel comments, DSAP are generally supportive of the proposal. The DSAP recommendations have been generally included in the amended landscape plan provided to Council, with the exception of the trellis and arbour structure. The elements recommended by the panel were not supported by Council noting that these elements would add additional bulk to the proposal. Further, windows changes where also not recommended by council so as to minimise privacy impacts.</p>
Landscape Officer	<p><b>Supported, subject to conditions</b></p> <p>The proposal is supported with regard to landscape issues.</p> <p>The Landscape Referral is assessed against the State Environmental Planning Policy (Housing) 2021 and the following landscape objectives of Warringah DCP 2011:</p> <ul style="list-style-type: none"> <li>- D1 Landscaped Open Space and Bushland Setting</li> <li>- D13 Front Fences and Front Walls</li> <li>- E1 Preservation of Trees or Bushland Vegetation</li> </ul> <p>The Arboricultural Impact Assessment (AIA) identifies 13 trees, of which trees 1, 2, 3, 5, 6, 7, and 13 are all located outside the property boundary and as such must be retained and protected during works. Of the remaining trees, trees 8, 9, 10, 11, and 12 are exempt by species or height and as such do not require consent for removal.</p> <p>Tree 4 can be supported for removal. Tree protection requirements outlined in the AIA are supported and a Project Arborist shall be engaged to supervise all work in the tree protection zone of trees to be retained, subject to the imposed conditions.</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>

Internal Referral Body	Comments
NECC (Development Engineering)	<p><b>Supported, subject to conditions</b></p> <p>The proposal includes an on site detention system and connection via an extension to Councils street drainage system. This is satisfactory subject to conditions. The proposed vehicle crossing and internal driveway are also satisfactory. The existing pram ramps adjacent to the refuge island in Blackbutts Road will need to be reconstructed to meet the grade requirements and a landing slab will be required at the existing bus stop. These requirements have been conditioned.</p>
Traffic Engineer	<p><b>Supported, subject to conditions</b></p> <p>The proposed application is for the demolition of an existing single storey dwelling and construction of four (4) 2-bedroom senior-living dwellings.</p> <p><b>Parking</b></p> <p>SEPP (Housing) 2021 specify the parking rates for senior living as 0.5 parking spaces for each bedroom. A total of 8 bedrooms is proposed, hence a requirement of 4 car parking spaces are required.</p> <p>The proposed development provides four garaged off-street accessible parking.</p> <p>The SEPP does not outline a visitor parking requirement however if assessed as unit development under the Warringah SEPP it would attract a visitor parking requirement of 0.8 (1) space. No visitor parking has been provided for the development. It is reasonable to assume that the residents of the development would from time to time have visitors and offstreet parking for this use should if possible be provided. Although the driveway is of a width that would allow for a vehicle to park on it and allow another to pass, vehicles parked at any location on the driveway would impede access to or from on or more garages. As the site is across the road from a carpark serving Lionel Watts Oval, other than at times when the Oval is in heavy use there is generally parking available there which could be used by visitors.</p> <p>Offstreet parking at the development is therefore considered adequate.</p> <p><b>Traffic Generation</b></p> <p>The traffic generation of the four seniors housing dwellings is estimated to be approximately 1.6 vehicle trips per peak hour with the daily vehicle trips calculated to be 8. This low level of traffic is acceptable and unlikely to impact upon traffic conditions on the surrounding road network.</p>

	<p><b><u>Vehicular Access</u></b></p> <p>Applicant has incorporated a driveway of sufficient width to allow for 2 vehicles to pass, as identified during the Pre-lodgement meeting, if a vehicle is required to reverse onto Blackbutts Road in order to allow an exiting vehicle to egress, it may pose high levels of risk.</p> <p>It is noted that swept path plots have shown that access to and from garages is tight with vehicles partly overhanging the landscaped areas. Low level landscaping will be required in critical manoeuvring areas. Egress from the garage for unit 4 is particularly constrained requiring a 4 point turn. In this location this is acceptable as it does not impede access to or from any other parking spaces.</p>
Waste Officer	<p><b><i>Supported, subject to conditions</i></b></p> <p>As a multiple occupancy with more than 3 dwellings Council will provide a wheel out - wheel in service to this development bin storage area.</p> <p>Doors to the bin storage area must be able to be latched in the open position during servicing and unlocked on waste collection day between 6am and 6pm.</p> <p>Doors and paths must be 1200mm wide and flat non-slip surface from the storage area to the kerb with no steps.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><b><i>Supported, subject to conditions</i></b></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>

#### 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. 1376440M dated 10 March 2023).

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

Commitment	Required Target	Proposed
Water	40	44
Thermal Comfort	Pass	Pass
Energy	50	51

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

## SEPP (Housing) 2021

### Part 5 – Housing for seniors and people with a disability

#### Division 3 Development Standards

Clause 84 – Development Standards (General)	
Standard	Compliance/Comment
2) Development consent must not be granted for the development unless:	
a) The site area of the development is at least 1,000m <sup>2</sup> .	<b>Non-compliant</b> See clause 4.6
b) The frontage of the site area of the development is at least 20m measured at the building line.	<b>Complaint</b> 23.59m
c) For development on land in a residential zone where residential flat buildings are not permitted - the development will not result in a building: <ul style="list-style-type: none"> <li>i) with a height of more than</li> <li>ii) 9.5m, excluding servicing equipment on the roof of the building, and</li> <li>iii) if the roof of the building contains servicing equipment resulting in the building having a height of more than 9.5m—the servicing equipment complies with subsection (3), and if the development results in a building with more than 2 storeys—the additional storeys are set back within planes that project at an angle of 45 degrees inwards from all side and rear boundaries of the site.</li> </ul>	<b>Compliant</b> The proposed maximum height is 7.8m
3) The servicing equipment must:	
a) be fully integrated into the design of the roof or contained and suitably screened from view from public places.	<b>Compliant</b> The plans do not detail any rooftop servicing equipment.

b) be limited to an area of no more than 20% of the surface area of the roof.
c) not result in the building having a height of more than 11.5m.

<b>Clause 85 – Development Standards for Hostels and Independent Living (Self-Care) Units</b>
<b>Standard</b>
1) Development consent must not be granted for development for the purposes of a hostel or an independent living unit unless the hostel or independent living unit complies with the following under Schedule 4.
2) An independent living unit, or part of an independent living unit, located above the ground floor in a multi-storey building need not comply with the requirements in Schedule 4 (being Sections 2, 7 - 13 and 15 – 20) if the development application is made by, or by a person jointly with, a social housing provider.

An assessment against Schedule 4 has been completed in the following tables:

<b>Part 1 - Standards applying to hostels and independent living units</b>	
<b>Section 2 - Siting Standards</b>	
1) If the whole of the site has a gradient of less than 1:10, 100% of the dwellings must have wheelchair access by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road.	<b>Compliant</b> The whole of the site adjoins a public road and wheelchair access via a continuous accessible path of travel is provided to all dwellings, as confirmed by the Access Report.
2) If the whole of the site does not have a gradient of less than 1:10: a) the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10, or 50% (whichever is greater), and b) the wheelchair access provided must be by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road or an internal road or a driveway accessible to all residents.	N/A
3) Access must be provided in accordance with AS 1428.1 so that a person using a wheelchair can use common areas and common facilities associated with the development.	N/A No communal areas proposed.
<b>Section 3 - Security</b>	

<p>Pathway lighting:</p> <ul style="list-style-type: none"> <li>a) must be designed and located so as to</li> <li>b) avoid glare for pedestrians and adjacent dwellings, and must provide at least 20 lux at ground level.</li> </ul>	<b>Capable of compliance, through Condition</b>
<b>Section 4 - Letterboxes</b>	
<p>Letterboxes:</p> <ul style="list-style-type: none"> <li>a) must be situated on a hard standing area and have appropriate wheelchair access</li> <li>b) by a continuous accessible path of travel,</li> <li>c) (within the meaning of AS 1428.1); and must be lockable, and must be located together in a central location adjacent to the street entry or, in the case of independent living units, must be located together in one or more central locations adjacent to the street entry.</li> </ul>	<b>Capable of compliance, through Condition</b>
<b>Section 5 - Private Car Accommodation</b>	
<p>If car parking (not being car parking for employees) is provided:</p> <ul style="list-style-type: none"> <li>a) car parking spaces must comply with the requirements for parking for persons with a disability set out in AS 2890.6, and</li> <li>b) 10% of the total number of car parking spaces (or at least one space if there are fewer than 10 spaces) must be designed to enable the width of the spaces to be increased to 3.8 metres, and</li> <li>c) any garage must have a power-operated door, or there must be a power point and an area for motor or control rods to enable a power-operated door to be installed at a later date.</li> </ul>	<b>Capable of compliance, through Condition</b>
<b>Section 6 - Accessible Entry</b>	
<p>Every entry (whether a front entry or not) to a dwelling, not being an entry for employees, must comply with sections 4.3.1 and 4.3.2 of AS 4299.</p>	<b>Compliant</b>
<b>Section 7 - Interior - General</b>	
<p>Internal doorways must have a minimum clear opening that complies with AS 1428.1.</p>	<b>Compliant</b>
<p>Internal corridors must have a minimum unobstructed width of 1m.</p>	<b>Compliant</b>
<p>Circulation space at approaches to internal doorways must comply with AS 1428.1.</p>	<b>Compliant</b>
<b>Section 8 - Bedroom</b>	

<p>At least 1 bedroom within each dwelling must have:</p> <ul style="list-style-type: none"> <li>a) an area sufficient to accommodate a wardrobe and a bed sized as follows: <ul style="list-style-type: none"> <li>i) <b>for a dwelling in a hostel</b> - a single-size bed,</li> <li>ii) <b>for an independent living unit</b> - a queen-size bed, and</li> </ul> </li> <li>b) a clear area for the bed of at least: <ul style="list-style-type: none"> <li>i) 1.2m wide at the foot of the bed, and</li> <li>ii) 1m wide beside the bed between it and the wall, wardrobe or another obstruction, and</li> </ul> </li> <li>c) 2 double general power outlets on the wall where the head of the bed is likely to be, and</li> <li>d) at least 1 general power outlet on the wall opposite the wall where the head of the bed is likely to be, and</li> <li>e) a telephone outlet next to the bed on the side closest to the door and a general power outlet beside the telephone outlet, and</li> <li>f) wiring to allow a potential illumination level of at least 300 lux.</li> </ul>	<p><b>Capable of compliance, through Condition</b></p>
<p><b>Section 9 - Bathroom</b></p>	

<p>1) At least 1 bathroom within a hostel or independent living unit must be on the ground or main floor and have the following facilities arranged within an area that provides for circulation space for a wheelchair around sanitary facilities in accordance with AS 1428.1:</p> <ul style="list-style-type: none"> <li>a) a slip-resistant floor surface,</li> <li>b) a washbasin with plumbing that</li> <li>c) would facilitate clearances that comply with AS 1428.1, a shower that complies with AS 1428.1, except that the following must be able to be accommodated: <ul style="list-style-type: none"> <li>i) a grab rail,</li> <li>ii) a portable shower</li> <li>iii) head, a folding seat,</li> </ul> </li> </ul> <p><b>Note:</b> Sub-section (1)(c) does not prevent the installation of a shower screen that can easily be removed to facilitate future accessibility.</p> <ul style="list-style-type: none"> <li>d) a wall cabinet sufficiently</li> <li>e) illuminated to be able to read the labels of items stored in it, a double general power outlet beside the mirror.</li> </ul>	<p><b>Capable of compliance, through Condition</b></p>
<p><b>Section 10 - Toilet</b></p>	
<p>A dwelling must have at least 1 toilet on the ground (or main) floor and be a visitable toilet that complies with the requirements for sanitary facilities of AS 4299.</p>	<p><b>Capable of compliance, through Condition</b></p>
<p><b>Section 11 - Surface Finishes</b></p>	
<p>Balconies and external paved areas must have slip-resistant surfaces.</p>	<p><b>Capable of compliance, through Condition</b></p>

<b>Section 12 - Door Hardware</b>	
Door handles and hardware for all doors, (including entry doors and other external doors), must be provided in accordance with AS 4299.	<b>Capable of compliance, through Condition</b>
<b>Section 13 - Ancillary Items</b>	
Switches and power points must be provided in accordance with AS 4299.	<b>Capable of compliance, through Condition</b>
<b>Part 2 - Additional Standards for Independent Living Units</b>	
<b>Section 15 - Living Room and Dining Room</b>	
1) A living room must have: <ul style="list-style-type: none"> <li>a) a circulation space in accordance with</li> <li>b) clause 4.7.1 of AS 4299, and</li> <li>a telephone adjacent to a general power outlet.</li> </ul>	<b>Capable of compliance, through Condition</b>
2) A living room and dining room must have wiring to allow a potential illumination level of at least 300 lux.	<b>Capable of compliance, through Condition</b>
<b>Section 17 - Access to kitchen, Main Bedroom, Bathroom and Toilet</b>	
In a multi-storey independent living unit, the kitchen, main bedroom, bathroom and toilet must be located on the entry level.	<b>Non-compliant</b> See Clause 4.6
<b>Section 18 - Lifts in Multi-Storey Buildings</b>	
In a multi-storey building containing separate independent living units on different storeys, lift access must be provided to dwellings above ground level of the building by way of a lift complying with clause E3.6 of the Building Code of Australia.	N/A
<b>Section 19 - Laundry</b>	
An independent living unit must have a laundry that has: <ul style="list-style-type: none"> <li>a) a circulation space at door approaches</li> <li>b) that complies with AS 1428.1, and</li> <li>c) provision for the installation of an</li> <li>d) automatic washing machine and a</li> <li>e) clothes dryer, and</li> <li>a clear space in front of appliances of at least 1,300mm, and</li> <li>a slip-resistant floor surface, and</li> <li>an accessible path of travel to any clothesline provided in relation to the dwelling.</li> </ul>	<b>Capable of compliance</b>
<b>Section 20 - Storage for Linen</b>	
Linen storage must be provided in accordance with clause 4.11.5 of AS 4299.	<b>Capable of compliance</b>
<b>Section 21 - Garbage</b>	

A garbage storage area must be provided in an accessible location.	<b>Compliant</b>
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<b>Clause 88 – Restrictions on Occupation of Seniors Housing</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
1) Development permitted under this Part may be carried out for the accommodation of only the following:	<b>Compliant</b> The proposed seniors housing development is to only be occupied by seniors; a condition of consent has been incorporated into the final recommendation to ensure this.
a) seniors or people who have a disability,	
b) people who live in the same household with seniors or people who have a disability,	
c) staff employed to assist in the administration and provision of services to housing provided under this Part.	
2) Development consent must not be granted under this Part unless the consent authority is satisfied that only the kinds of people referred to in sub-section (1) will occupy accommodation to which the development relates.	As above

#### Division 4 – Site-related requirements

<b>Clause 93 – Location and access to facilities and services (independent living units)</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
1) Development consent <b>must not</b> be granted for development for the purposes of an independent living unit with adequate access to <b>facilities and services</b> :	
a) by a transport service that complies with sub-section (2), or	
b) on-site.	
<b>Note:</b> Facilities and services means:	
a) shops and other retail and commercial services that residents may reasonably require, and	
b) community services and recreation facilities, and	
c) the practice of a general medical practitioner.	
2) The transport service must:	
a) take the residents to a place that has adequate access to facilities and services, and	<b>Compliant</b> The subject site is approximately 375m from Glenrose Village Shopping Centre, which is not more than 400m walking distance of a bus stop used by a regular bus service (within hour servicing (281) the bus stop between 08:00 and 18:00 each day from Monday to Sunday.

b) for development on land within the Greater Sydney region:

- i) not be an
- ii) on-demand booking service for the transport of passengers for a fare, and be available both to and from the site at least once between 8am and 12pm each day and at least once between 12pm and 6pm each day.



The pedestrian routes from the subject site to Glenrose Village Shopping Centre and the

3) For the purposes of sub-sections (1) and (2), access is adequate if:

<p>a) the facilities and services are, or the transport service is, located at a distance of not more than 400m from the site, and</p>	<p><b>Compliant</b></p>
<p>b) the distance is accessible by means of a suitable access pathway, and</p>	<p><b>Compliant</b></p>
<p>c) the gradient along the pathway complies with sub-section (4)(c).</p>	<p><b>Compliant</b></p>
<p>4) In sub-section (3):</p>	
<p>a) a suitable access pathway is a path of travel by means of a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like, and</p>	<p>-</p>
<p>b) the distance is to be measured by reference to the length of the pathway, and</p>	<p>-</p>

<p>c) the overall average gradient must be no more than 1:14 and the gradients along the pathway must be no more than:</p> <ul style="list-style-type: none"> <li>i) 1:12 for a</li> <li>ii) maximum</li> <li>iii) of 15m at a time, or 1:10 for a maximum length of 5m at a time, or 1:8 for a maximum length of 1.5m at a time.</li> </ul>	-
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<b>Clause 95 – Water and sewer</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
1) A consent authority must not consent to development under this Part unless the consent authority is satisfied the seniors housing will:	
a) be connected to a reticulated water system, and	<b>Capable of compliance, through Condition</b> The subject site is serviced by existing water and sewerage infrastructure.
b) have adequate facilities for the removal or disposal of sewage.	<b>Capable of compliance, through Condition</b>
2) If the water and sewerage services will be provided by a person other than the consent authority, the consent authority:	
a) must consider the suitability of the site in relation to the availability of reticulated water and sewerage infrastructure, or	<b>Capable of compliance, through Condition</b>
b) if reticulated services are not available—must satisfy the relevant authority that the provision of water and sewerage infrastructure, including environmental and operational considerations, is satisfactory for the development.	N/A

**Division 5 – Design requirements**

<b>Clause 97 – Design of in-fill self-care housing</b>
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Standard	Compliance/Comment
In determining a development application for development for the purposes of in-fill self-care housing, a consent authority must consider the <b>Seniors Living Policy: Urban Design Guideline for Infill Development</b> published by the Department of Infrastructure, Planning and Natural Resources in March 2004.	<b>Compliant</b> See comments below under table

Clause 98 – Design of seniors housing	
Standard	Compliance/Comment
A consent authority must not consent to development under this Part unless the consent authority is satisfied that the development demonstrates adequate regard has been given to the principles set out in Division 6 (see table below).	<b>Compliant</b> See comments below

#### Division 6 – Design Principles

Clause 99 – Neighbourhood amenity and streetscape	
Standard	Compliance/Comment
Development for the purposes of seniors housing should:	
a) recognise that the operational, functional and economic requirements of residential care facilities typically require a different building shape from other residential accommodation, and	<b>Compliant</b> The subject site is located within the R2 Low Density Residential zone and is adjoined exclusively by detached dwelling houses.  The development recognises the desirable elements of the subject sites current character and adopts a design that is consistent in-built form with that of detached style housing in the local area.
b) recognise the desirable elements of: <ul style="list-style-type: none"> <li>i) the location's current character, or</li> <li>ii) for precincts undergoing a transition - the future character of the location so new buildings contribute to the quality and identity of the area,</li> </ul>	
c) complement heritage conservation areas and heritage items in the area, and	N/A

<p>d) maintain reasonable neighbourhood amenity and appropriate residential character by:</p> <ul style="list-style-type: none"> <li>i) providing building setbacks to reduce</li> <li>ii) bulk and overshadowing, and</li> <li>iii) using building form and siting that relates</li> <li>iv) to the site's land form, and adopting building heights at the street frontage that are compatible in scale with adjacent buildings, and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and</li> </ul>	<p><b>Compliant</b></p> <p>The proposal is compatible with the existing low density-built form character of the immediate locality by proposing a 2 storey residential development, with the proposal complying with the maximum height control under the Warringah Local Environmental Plan 2011. The proposal will also be compatible with the existing and future character of the locality and will contribute towards enhancing the existing streetscape by providing an appropriate front, side and rear building setback that will positively contribute to the cohesiveness and visual appreciation of the streetscape.</p>
<p>e) be designed so the front building on the site is set back generally in line with the existing building line, and</p>	<p><b>Compliant</b></p> <p>The proposed development complies with the front setback control (6.5m) under the WDCP 2011.</p>
<p>f) include plants reasonably similar to other plants in the street, and</p>	<p><b>Compliant</b></p> <p>The areas identified as soft landscaping provide a satisfactory level of landscaping through the provision of trees and shrubs which will assist in softening the appearance of the development</p> <p>when viewed from the street and neighbouring properties.</p>
<p>g) retain, wherever reasonable, significant trees, and</p>	<p><b>As above</b></p>
<p>h) be designed so no building is constructed in a riparian zone.</p>	<p><b>Compliant</b></p>

<b>Clause 100 – Visual and acoustic privacy</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
<p>Development for the purposes of seniors housing should consider the visual and acoustic privacy of adjacent neighbours and residents by:</p>	
<p>a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and</p>	<p><b>Compliant, through Condition.</b></p> <p>Concern has been raised within the submission to the west and south of the site, with regard to the impacts the proposed development would have on privacy. The windows proposed at first floor level along the western and southern side of the development will have a direct line of site to the adjoining properties private open space. Conditions of consent have been recommended to ensure the sill height of windows to both the southern and western side of the development from dwellings TH3 and TH4 are raised and screened to mitigate potential site lines.</p>

b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	<b>Compliant</b> The proposed bedrooms are located away from the shared driveway proposed under this application.
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<b>Clause 101 – Solar access and design for climate</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
Development for the purposes of seniors housing should:	
a) for development involving the erection of a new building provide residents of the building with adequate daylight in a way that does not adversely impact the amount of daylight in neighbouring buildings, and	<b>Compliant</b> The proposed development is compliant with the solar access requirements of both the WDCP 2011 and the SEPP Housing 2021.
b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation, solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	<b>Compliant</b> The proposed development provides suitable natural ventilation, heating and lighting. The proposed development is supported by a BASIX Certificate demonstrating these matters.

<b>Clause 102 – Stormwater</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
Development for the purposes of seniors housing should aim to:	
a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and	<b>Compliant</b> The proposed development is supported by engineering plans demonstrating suitable stormwater management measures
b) include, where practical, on-site stormwater detention or re-use for second quality water uses.	<b>Compliant</b> As above

<b>Clause 103 – Crime prevention</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
Development for the purposes of seniors housing should be designed in accordance with environmental design principles relating to crime prevention, provide personal property security for residents and visitors and encourage crime prevention by:	
a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins the area, driveway or street, and	<b>Compliant</b> The proposed development is designed in such a way that occupants of the dwellings are able to observe approaching visitors from inside the dwelling.
b) providing shared entries, if required, that serve a small number of dwellings and that are able to be locked, and	<b>Compliant</b> The proposed development does not include shared entries to the dwellings.

c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.	<b>Compliant</b> The proposed development is designed in such a way that occupants of the dwellings are able to observe approaching visitors from inside the dwelling, without opening the door.
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<b>Clause 104 – Accessibility</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
Development for the purposes of seniors housing should:	<b>Compliant</b>
a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and	The proposed development provides safe and generally level pedestrian access to nearby public transport services.
b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.	The proposed development provides direct access to the apartments from the proposed garages.

<b>Clause 105 – Waste management</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
Development for the purposes of seniors housing should include waste facilities that maximise recycling by the provision of appropriate facilities.	<b>Compliant</b> The proposed development is supported by acceptable bin storage areas to the front of the site.

#### **Division 7 – Non-Discretionary Development Standards**

<b>Clause 106 – Interrelationship of Division with design principles in Division 6</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
Nothing in this Division permits the granting of consent to development under this Part if the consent authority is satisfied that the development does not demonstrate that adequate regard has been given to the principles set out in Division 6.	<b>Compliant</b>

<b>Clause 108 – Non-discretionary development standards for independent living units</b>	
<b>Standard</b>	<b>Compliance/Comment</b>
2) The following are non-discretionary development standards in relation to development for the purposes of an <b>independent living unit</b> :	
<b>Height</b>	
a) no building exceeds a height of 9.5m, excluding servicing equipment on the roof of a building,	<b>Compliant</b> The entire building is below a height of 9.5m

<p>b) servicing equipment on the roof of a building, which results in the building exceeding a height of 9.5m:</p> <ul style="list-style-type: none"> <li>i) is fully integrated into the design of the roof or contained and suitably screened</li> <li>ii) from view from public places, and</li> <li>iii) is limited to an area of no more than 20% of the surface area of the roof, and does not result in the building exceeding a height of 11.5m.</li> </ul>	
<p><b>Density and Scale (FSR)</b></p>	
<p>c) the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less.</p>	<p><b>Compliant</b></p>
<p><b>Landscaped Area</b></p>	
<p>d) for a development application made by a social housing provider - at least 35m<sup>2</sup> of landscaped area per dwelling,</p>	<p>N/A</p>
<p>e) if (d) does not apply - at least 30% of the site area is landscaped,</p>	<p><b>Compliant</b> 283sqm (30.3%)</p>
<p>f) a deep soil zone on at least 15% of the site area, where each deep soil zone has minimum dimensions of 3m and, if practicable, at least 65% of the deep soil zone is located at the rear of the site.</p>	<p><b>Compliant</b> Deep Soil: 1944sqm (15.4%)</p> <p><b>Non-compliant</b> Deep Soil Rear: 65sqm (46.2%)</p>
<p><b>Solar Access</b></p>	
<p>g) at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter in living rooms and private open spaces.</p>	<p><b>Compliant</b> 100% or 4/4 dwellings receive 3 hours of solar access to living room and private open space</p>
<p><b>Private Open Space</b></p>	
<p>h) for a dwelling in a single storey building or a dwelling located, wholly or in part, on the ground floor of a multi-storey building:</p>	<p><b>Compliant</b> All dwellings have greater than 15sqm of private open space.</p>

<p>i) at least 15m<sup>2</sup> of private open space per dwelling, and ii) at least 1 private open space with minimum dimensions of 3m accessible from a living area located on the ground floor.</p> <p><b>Note:</b> The open space needs to be accessible only by a continuous accessible path of travel, within the meaning of AS 1428.1, if the dwelling itself is an accessible one (see Schedule 4, section 2).</p>	
<p>i) for a dwelling in a multi-storey building not located on the ground floor – a balcony accessible from a living area with minimum dimensions of 2m and: i) an area of at least 10m<sup>2</sup>, or ii) for a 1 bedroom dwelling - an area of at least 6m<sup>2</sup>.</p>	N/A
<b>Car Parking</b>	
<p>j) for a development application made by, or made by a person jointly with, a social housing provider - at least 1 parking space for every 5 dwellings,</p>	N/A
<p>k) if (j) does not apply - at least 0.5 parking space for each bedroom.</p>	<b>Compliant</b>

### Seniors Living Policy: Urban Design Guideline for Infill Development

Pursuant to Clause 97 in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004. The provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* have been taken into consideration in the assessment of the application against the design principles set out in the SEPP.

Section	Requirements	Comment
1. Responding to context	Built Environment – New development is to follow the patterns of the existing residential neighbourhood in terms of built form. Policy environment – Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that contribute to its unique character.	Consideration has been had to the policy controls of Warringah DCP and Warringah LEP in regard to built form and scale in the R2 Zone. The proposed building form represents a building mass that is consistent with a generic dwelling house appearance. The development provides sufficient separation, breaks in the built form and visual relief, particularly as viewed from adjoining properties.
2. Site Planning and design	Objectives of this section are to:  -Minimise the impact of new development on neighbourhood character -Minimise the physical and visual dominance of car parking, garaging and vehicular circulation.	Landscaping has been incorporated into the design to offset the impact of the 'gunbarrel' design of the development.
3. Impacts on streetscape	Objectives of this section are to: -Minimise impacts on the existing streetscape and enhance its desirable characteristics -Minimise dominance of driveways and car park entries in streetscape.	The application proposes a compliant setback to the Blackbutts street frontage to ensure the prevailing building line is maintained. The proposed development is designed to mimic the facade of a dwelling house.
4. Impacts on neighbours	The proposal is generally in accordance with the requirements of this section.	Reasonable amenity to neighbouring properties is generally maintained, subject to conditions for privacy for a number of the first-floor windows that overlook neighbouring properties. There is no unreasonable solar access to adjoining properties.

5. Internal site amenity	Objectives of this section are to: -Provide safe and distinct pedestrian routes to all dwellings and communal facilities.	The application proposes safe and equitable access to all dwellings from the street.
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### Conclusion

The proposal is generally consistent with the relevant requirements and principles set out in the SEPP.

As such, approval of the application is recommended.

### SEPP (Transport and Infrastructure) 2021

#### Ausgrid

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

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

#### Comment:

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

### SEPP (Resilience and Hazards) 2021

#### Chapter 4 – Remediation of Land

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

### Warringah Local Environmental Plan 2011

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

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.8m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (See detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

**4.6 Exceptions to development standards**

Description of non-compliance:

Development standard:	'Minimum site area' under Clause 84(2)(a) of State Environmental Planning Policy (Housing) 2021
Requirement:	1000sqm
Proposed:	938.1sqm
Percentage variation to requirement:	6.2%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 84(2)(a) of SEPP (Housing) 2021 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 84(2)(a) - 'Minimum site 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 demonstrated that the underlying objective or purpose of the development standard is not relevant to the development with the consequence that compliance is unnecessary, 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:

*"There are sufficient environmental planning grounds to justify contravening the development standard in the particular circumstances on the basis of the following considerations:*

- The proposed exception does not result in an excessive visual building bulk or scale, maintaining an appropriate building presentation to the street frontage and neighbouring properties.*
- The proposed exception in the minimum site size development standard is modest in its extent (6.2%) and it would not be perceivable in the visual presentation of the property to surrounding properties or the streetscape.*
- The proposed exception does not result in a significant reduction in the quality of the proposed built form will not significantly alter the spatial characteristics of the property.*
- The proposed exception will not result in unreasonable or excessive physical impacts on the*

- neighbouring properties or the streetscape quality of the property.*
- *The proposed exception is capable of being accommodated on the site without imposing any significant or adverse impacts on the amenity of the surrounding land, or the scenic quality of the wider locality.*
  - *Strict compliance with the minimum site size development standard would be unreasonable and unnecessary to the extent that the site would be unable to accommodate a form of development that is consistent with the aims and objectives of the SEPP, in circumstances where the building form does not impose any significant or adverse impacts on the amenity of surrounding land.*
  - *The extent of the proposed development is not excessive as a result of this exception, and the development-to-land ratio proposed, as evidenced by the proposal's compliance with the suite of built form controls relating to car parking, boundary setbacks, private open space, deep soil landscaped area, building height and floor space ratio. It is compatible to the extent of development that can be reasonably expected upon land within the R2 zone generally.*
  - *The proposed dwellings will not result in a significant reduction in landscaped areas on the property. There remain appropriately located landscaped areas for vegetation and private recreational use. For these reasons the proposal will achieve a suitable balance between landscaped areas and the built form despite the site size exception."*

**Planner Comment:**

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes the orderly and economic use and development of the land, in so far as the proposed development will not be dominate the streetscape. The proposed variation does not lead to the any serious or substantial non-compliances with other controls under SEPP (Housing) 2021 or the WLEP 2011.
- The development promotes good design and amenity of the built environment, noting that noting that the non-compliance will not contribute to any unreasonable impact on amenity considerations (i.e solar access, privacy and view loss) to neighbouring properties.

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 development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard Clause 84(2)(a) of State Environmental Planning Policy (Housing) 2021 does not express any objectives. In this circumstance, the principles of the SEPP are addressed as follows:

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

a) enabling the development of diverse housing types, including purpose-built rental housing,

Comment:

The proposed development increases the residential density on the site from one dwelling to four, with each dwelling being for the purpose of seniors housing. As such, the proposed development increases the supply and diversity of residences that meet the needs of seniors in the locality.

b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,

Comment:

The proposed development is for seniors. Conditions have been imposed to ensure this is maintained for the life of the development.

c) ensuring new housing development provides residents with a reasonable level of amenity,

Comment:

The proposed development is of good design, demonstrated by way of its compliance with planning controls (or acceptability on merit where a non-compliance is proposed), and by way of its minimisation of impacts on amenity.

d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,

Comment:

The proposed development demonstrates efficient use of existing infrastructure and services by way of its location. The subject site is already supplied with access to all essential services (water, electricity, sewerage, stormwater drainage and vehicular access), and is closely located to shopping, medical, community service, and recreational facilities, as required by the SEPP.

e) *minimising adverse climate and environmental impacts of new housing development,*

Comment:

The site is not impacted by any environmental constraints.

*f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,*

Comment:

As detailed throughout this report, the proposed development does not result in any unreasonable impacts in relation to noise, privacy, solar access, views, or other factors contributing to the amenity of the subject site and adjacent sites.

*g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*

Comment:

The proposed development is for seniors housing.

*d) mitigating the loss of existing affordable rental housing.*

Comment:

The proposed development is not affordable rental housing. The existing development on site is not affordable rental housing.

### **Zone objectives**

The underlying objectives of the R2 Low Density Residential zone are:

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

Comment:

The proposed development retains the residential use of the site.

It is considered that the development satisfies this objective.

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

Comment:

The proposed is for a new multi dwelling seniors housing development. The proposed development will provide for housing for the elderly in a convenient location, being close to retail and other commercial services.

It is considered that the development satisfies this objective.

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

Comment:

The development is consistent with the desired landscape setting, retaining landscaping to the

front and rear of the building.

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the 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 Clause 84(2)(a) - 'Minimum site area' Development Standard can not be assumed.

Description of non-compliance:

Development standard:	Clause 85(1) Schedule 4, Clause 17 'Access to kitchen, main bedroom, bathroom and toilet' of State Environmental Planning Policy (Housing) 2021
Requirement:	100% of dwelling to comply
Proposed:	3 out of 4 dwellings comply
Percentage variation to requirement:	25%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 85(1) Schedule 4, Clause 17 'Access to kitchen, main bedroom, bathroom and toilet' of SEPP (Housing) 2021 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 85(1) Schedule 4, Clause 17 'Access to kitchen, main bedroom, bathroom and toilet' of SEPP (Housing) 2021 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:**

The Applicant's written request has demonstrated that the underlying objective or purpose of the development standard is not relevant to the development with the consequence that compliance is unnecessary, notwithstanding the non-compliance with the development standard.

*(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 underlying objective or purpose of the development standard is not relevant to the development with the consequence that compliance is unnecessary, 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:

**Planner Comment:**

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes the orderly and economic use and development of the land, in so far as the proposed development provides lift access to the upper storey of the non-compliant dwelling, which will offset the loss of the bedroom at ground floor level. The amended plans (Dated June 2023) show that even in a worst-case scenario where the proposed lift is unable to provide access to the first floor an occupant would still have access to adequate laundry, kitchen and bathroom services, as well as a generously sized living area.
- The development promotes good design and amenity of the built environment, noting that the internal alterations, which relocates the bedrooms to the first floor will not contribute to any unreasonable impact on amenity considerations (i.e solar access, privacy and view loss) to neighbouring properties.

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 R2 Low Density Residential zone. An assessment against these objectives is provided below.

**Objectives of development standard**

Clause 85(1) Schedule 4, Clause 17 of State Environmental Planning Policy (Housing) 2021 does not express any objectives. In this circumstance, the principles of the SEPP are addressed as follows:

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

a) enabling the development of diverse housing types, including purpose-built rental housing,

Comment:

The proposed development increases the residential density on the site from one dwelling to three, with each dwelling being for the purpose of seniors housing. As such, the proposed development increases the supply and diversity of residences that meet the needs of seniors in the locality.

b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,

Comment:

The proposed development is for seniors. Conditions have been imposed to ensure this is maintained for the life of the development.

c) ensuring new housing development provides residents with a reasonable level of

amenity,

Comment:

The proposed development is of good design, demonstrated by way of its compliance with planning controls (or acceptability on merit where a non-compliance is proposed), and by way of its minimisation of impacts on amenity.

d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,

Comment:

The proposed development demonstrates efficient use of existing infrastructure and services by way of its location. The subject site is already supplied with access to all essential services (water, electricity, sewerage, stormwater drainage and vehicular access), and is closely located to shopping, medical, community service, and recreational facilities, as required by the SEPP.

e) *minimising adverse climate and environmental impacts of new housing development,*

Comment:

The site is not impacted by any environmental constraints.

f) *reinforcing the importance of designing housing in a way that reflects and enhances its locality,*

Comment:

As detailed throughout this report, the proposed development does not result in any unreasonable impacts in relation to noise, privacy, solar access, views, or other factors contributing to the amenity of the subject site and adjacent sites.

g) *supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*

Comment:

The proposed development is for seniors housing.

d) *mitigating the loss of existing affordable rental housing.*

Comment:

The proposed development is not affordable rental housing. The existing development on site is not affordable rental housing.

### **Zone objectives**

The underlying objectives of the R2 Low Density Residential zone are:

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

Comment:

The proposed development retains the residential use of the site.

It is considered that the development satisfies this objective.

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

Comment:

The proposed is for a new multi dwelling seniors housing development. The proposed development will provide for housing for the elderly in a convenient location, being close to retail and other commercial services.

It is considered that the development satisfies this objective.

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

Comment:

The development is consistent with the desired landscape setting, retaining landscaping to the front and rear of the building.

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environment

**6.2 Earthworks**

The objectives of Clause 6.2 - 'Earthworks' require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

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

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

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

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

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

*(f) the likelihood of disturbing relics*

Comment:

The site is not mapped as being a potential location of Aboriginal or other relics.

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

Comment:

The site is not located in the vicinity of any watercourse, 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.

### Warringah Development Control Plan

#### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6.9m	-	Yes
B3 Side Boundary Envelope	4m	Within envelope	-	Yes
	4m	Within envelope	-	Yes
B5 Side Boundary Setbacks	0.9m	<b>West</b> Ground - 1.5m First - 4m	-	Yes
	0.9m	<b>East</b> Ground - 6.4m First - 8.2m	-	Yes
B7 Front Boundary Setbacks	6.5m	Ground - 6.5m First - 6.6m - 7.3m	-	Yes
B9 Rear Boundary Setbacks	6m	3.75m	37.5%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	SEPP (Housing) 2021 controls prevail	N/A	N/A

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	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	N/A	N/A
D2 Private Open Space	Yes	Yes

D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

#### **B9 Rear Boundary Setbacks**

##### Description of non-compliance

Clause B7 of the Waringah DCP requires development be setback at least 6m from the rear property boundary. The proposed rear dwelling will be setback 4m from the eastern rear boundary, resulting in a 33% variation.

##### Merit consideration:

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

- *To ensure opportunities for deep soil landscape areas are maintained.*

##### Comment:

Sufficient deep soil landscaping is provided within the rear of the site to provide for meaningful landscaping.

- *To create a sense of openness in rear yards.*

##### Comment:

The proposed development introduces a new structure within an area which was open. In this respect the development will reduce the sense of openness in the rear yard. The rear yard provides a suitable sense of openness by virtue of the design of the building, with the rear portion only being single storey. Furthermore, the building massing retains an appropriate sense

of openness in surrounding rear yards.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment:

The proposed encroachment is at ground floor level and is considered to be sufficiently obscured by existing and proposed boundary fencing and vegetation.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

This assessment concludes that the location of the proposal in relation to the rear boundary is acceptable, given no unreasonable amenity impacts will be associated with the development.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

As noted above, the proposal will not give rise to unreasonable privacy impacts.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

Clause 108(2)(e) of *SEPP (Housing) 2021* states that Council cannot refuse the application if the 30% of the site is landscaped is compatible with the streetscape in which the building is located. Therefore, the proposal cannot be refused in this regard, despite a non-compliance with the DCP.

#### **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 \$15,710 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,570,961.

## 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 84(2)(a) 'Minimum site area' and Clause 85(1) Schedule 4, Clause 17 'Access to kitchen, main bedroom, bathroom and toilet' of SEPP (Housing) 2021 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

The assessment of this proposal for demolition works and construction of a 4 dwelling seniors housing development, pursuant to SEPP (Housing) 2021.

The proposal has been amended throughout the assessment process in response to feedback from

Council's Landscape Architect and the Design and Sustainability Advisory Panel.

Concerns raised in the objections have been considered and addressed where appropriate by submission.

On balance, it is found that the building will make a positive contribution to French Forest locality.

This report concludes with the recommendation that the Northern Beaches Local Planning Panel, as the consent authority, should **APPROVE** the development application.  
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 permits a contravention of SEPP (Housing) 2021 development standards 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 DA2023/0304 for Demolition works, and the construction of four seniors housing dwellings and associated works. on land at Lot 2413 DP 752038, 87 Blackbutts Road, FRENCHS FOREST, subject to the conditions printed below:

### Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

## GENERAL 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

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA020/ Revision 1	15 February 2023	Walsh Architects
DA100/ Revision 1	15 February 2023	Walsh Architects
DA101/ Revision 1	15 February 2023	Walsh Architects
DA102/ Revision 1	15 February 2023	Walsh Architects
DA103/ Revision 1	15 February 2023	Walsh Architects
DA200/ Revision 1	15 February 2023	Walsh Architects
DA201/ Revision 1	15 February 2023	Walsh Architects
DA300/ Revision 1	15 February 2023	Walsh Architects
DA301/ Revision 1	15 February 2023	Walsh Architects

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
D01/ Revision B	February 2023	Smart structures Australia
D04/ Revision B	February 2023	Smart structures Australia
D05/ Revision C	February 2023	Smart structures

		Australia
D10/ Revision A	February 2023	Smart structures Australia
D11/ Revision A	February 2023	Smart structures Australia

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX certificate No. 1376440M	10 March 2023	Building Sustainability Assessments
Arboricultural Impact Assessment Report/ Revision A	24 February 2023	Hugh the Arborist
Access Assessment Report	14 March 2023	Jensen Hughes
Geotechnical Report	4 December 2019	Ascent
Traffic and Parking Impact Statement	14 March 2023	Mclaren Traffic

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:

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Landscape Plan/ Revision A	20 June 2023	iScape

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	Khosrow Ataii	20 March 2020

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:

<b>Other Department, Authority or Service</b>	<b>EDMS Reference</b>	<b>Dated</b>
Ausgrid	Ausgrid Referral Response	N/A

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://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 seniors housing, as follows:

*Seniors housing means a building or place that is—*

- (a) a residential care facility, or*
- (b) a hostel within the meaning of clause 12 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, or*
- (c) a group of self-contained dwellings, or*
- (d) a combination of any of the buildings or places referred to in paragraphs (a)–(c), and that is, or is intended to be, used permanently for—*
- (e) seniors or people who have a disability, or*
- (f) people who live in the same household with seniors or people who have a disability, or*
- (g) staff employed to assist in the administration of the building or place or in the provision of services to persons living in the building or place,*  
*but does not include a hospital.*

(Dictionary, Warringah Local Environmental Plan 2011)

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 sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$15,709.61 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$1,570,960.64.

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

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

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

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

7. **Security Bond**

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

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

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

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

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

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

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

**Construction, Excavation and Associated Works Bond (Drainage Works)**

The Applicant is to lodge a bond of \$60,000 as security against any damage or failure to complete the construction of stormwater drainage and pavement/shoulder reconstruction works that revert to Councils care and control as part of this consent.

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

Reason: Protection of Councils infrastructure

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

The Applicant is to lodge a bond of \$30,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways as part of this consent.

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

Reason: Protection of Councils infrastructure

**Construction, Excavation and Associated Works Bond (Maintenance for civil work)**

The developer/ applicant must lodge with Council a maintenance bond of \$10,000 for the construction of the civil works associated with the development that revert to Council's care and

control. The maintenance bond will only be refunded upon completion of the six month maintenance period, if work has been completed in accordance with the approved plans and to the satisfaction of Council. The maintenance bond is to be paid prior to Council issuing practical completion.

Reason: To ensure adequate protection of Council infrastructure.

## BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

### 9. Amended Landscape Plan

An amended landscape plan shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details:

- a) all tree planting shall be 75 litre pot size,
- b) all screen planting along the western boundary shall be *Viburnum odoratissimum* and 45 litre pot size,
- c) an additional 1 x *Elaeocarpus reticulatus* shall be included on the western side of TH4 to match the other three (along the western boundary),
- d) substitute the 2 x *Lagerstroemia indica* in the rear setback with 2 x *Tristaniopsis laurina* 'Luscious',
- e) include a minimum of 4 x *Banksia robur* in the above ground OSD area in the front setback, positioned towards the front fence.

Certification shall be provided to the Certifier that these amendments have been documented.

Reason: Landscape amenity.

### 10. Traffic Management and Control

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

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

### 11. Stormwater Disposal

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil or Hydraulic Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG), indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. The applicant is to provide a certification and drainage plans detailing the provision of on-site stormwater detention in accordance with the concept drainage plans prepared by Smart Structures Australia Project Number 190373: Sheet No. D00 rev A dated 27.02.23, Sheet No. D01 rev B dated 13.03.23, Sheet No. D04 rev B dated 13.03.23, Sheet No. D05 rev B dated 13.03.23.

The drainage plans must address the following:

- i. The outlet for the OSD system is to be designed for tailwater conditions.

Detailed drainage plans, including Engineering Certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

12. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 5 metres wide in accordance with Northern Beaches Council Standard Drawing A4/3330/1 N in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

A Council 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. **Structural Adequacy and Excavation Work**

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

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

14. **Construction Traffic Management Plan**

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

Truck movements must be agreed with Council's Traffic Engineer prior to submission of the CTMP.

The CTMP must address following:

- i The proposed phases of construction works on the site, and the expected duration of each construction phase
- i 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
- i Make provision for all construction materials to be stored on site, at all times
- i The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- i 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
- i 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
  - i Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
  - i Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
  - i Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
  - i 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
  - i 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
  - i 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
  - i 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
  - i 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
  - i 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
  - i Proposed protection for Council and adjoining properties
  - i The location and operation of any on site crane

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

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

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

15. **Removal of Redundant Driveways**

All redundant driveways shall be removed and reinstated to Council standard kerb and gutter.

Suitably prepared plans shall be submitted to for an approval under and approved by Council prior to the issue of the Construction Certificate. All costs associated with the works shall be borne by the applicant.

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

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

16. **Amendments to the approved plans**

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

- i The western facing bedroom 2 windows in dwellings TH3 and TH4 shall have a fixed privacy screen which covers the whole window, and has louvres which have gaps of no greater than 20mm.
- i The southern facing bedroom 2 window in dwellings TH4 is to be frosted glass below 1.6m or be highlight windows with a minimum sill height of 1.56 from the finished floor level.

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

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

17. **Submission Roads Act Application for Civil Works in the Public Road**

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

The application is to include four (4) copies of Civil Engineering plans for the design of the driveway crossing, footpath, kerb and gutter, bus stop slab and pram ramp reconstruction which are to be generally in accordance with the Council's specification for engineering works – AUSSPEC #1. The plan shall be prepared by a qualified Civil Engineer. The design must include the following information:

1. 5 metre wide driveway crossing in accordance with Council drawing A4/3330/1 N.
2. 150mm kerb and gutter for the entire frontage of the site in accordance with Council drawing A4/2276/A.
3. 1500mm wide concrete footpath for the entire frontage of the site in accordance with Council drawing A4/10536.
4. 2000mm wide concrete slab 100mm thick between the existing footpath and the kerb adjacent to the existing bus stop in front of 95 Blackbutts Road.
5. Removal and reinstatement of the pram ramps and associated footpath on either side of the existing refuge island in front of 97 Blackbutts Road in accordance with Council drawing A4/7284.
6. 1.8 metre lintel with 900mm grated kerb inlet pit in front of the site with a 375mm RCP extension at 1% minimum grade to the existing Council drainage pit in front of 91 Blackbutts Road in accordance with Council drawing A2/5476/A.

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

An application is to be submitted to the Certifying Authority prior to any of the above works within the road reserve.

All the above works must be completed to Council's satisfaction prior to any occupation of the dwellings.

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

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

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

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

19. **Pre-Construction Stormwater Assets Dilapidation Report**

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at: <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2>.

The pre-construction / demolition Dilapidation Report must be submitted to Council for approval and the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

20. **Compliance with Standards**

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

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

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

21. **External Finishes to Roof**

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

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

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

development.

22. **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](http://www.sydneywater.com.au) for:

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

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

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

23. **Requirements for Seniors Housing or Housing for Persons with a Disability**

The development is for the purposes of Seniors Housing or Housing for Persons with a Disability and is required to comply with all the standards specified in Part 1 - "Standards applying to hostels and independent living unit" within State Environmental Planning Policy (Housing) 2021, with exception of Clause 85(1) Schedule 4, Clause 17 'Access to kitchen, main bedroom, bathroom and toilet'

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

Reason: To ensure public safety and equitable access for seniors or people with a disability.

24. **Boundary Fencing**

No consent is given for any boundary fencing.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure compliance with the Dividing Fences Act 1991.

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

25. **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) tree protection requirements and works under section 9 Recommendations, and 10 AMS and Tree Protection Requirements,
- b) works under section 11 Hold Points,
- c) all stormwater work in tree protection zones (and in particular for tree 13).

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.

26. **Tree Removal Within the Property**

This consent approves the removal of existing trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:

- a) tree 4 - *Quercus robur*,
- b) 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.

27. **Work Zones and Permits**

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

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

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

28. **Pre-Construction Dilapidation Report**

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

Properties: No. 91 Blackbutts Road, Frenchs Forest and Nos. 4 and 6 Kalgal Street, Frenchs Forest

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

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

been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

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

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

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

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

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

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

## DURING BUILDING WORK

30. **Protection of Existing Street Trees**

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree(s) fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

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: Street tree protection.

31. **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/Project 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.

Reason: Tree and vegetation protection.

### 32. **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.

33. **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.

34. **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.

35. **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.

36. **Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

37. **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 Certifying Authority.

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

38. **Property Boundary Levels**

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

Reason: To maintain the existing profile of the nature strip/road reserve.

39. **Traffic Control During Road Works**

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

Reason: Public Safety.

40. **Footpath Construction**

The applicant shall reconstruct the footpath to 1500mm wide for the entire frontage of the site, construct a slab adjacent to the existing bus stop in front of 95 Blackbutts Road and remove and reinstate the pram ramps and associated footpath on either side of the existing refuge island in front of 97 Blackbutts Road.

The works shall be in accordance with the following:

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

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

41. **Civil Works Supervision**

The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practicing Civil Engineer.  
Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

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

42. **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.

### BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

43. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved amended Landscape Plan(s), 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 located either within garden bed or within a prepared bed within lawn,
- c) mass planting shall be installed in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch.

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.

44. **Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 qualifications 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.

45. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian

Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

46. **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.

47. **Shared Zone Bollard**

A bollard is to be provided at the shared zone between disabled spaces in accordance to Australian Standards AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

48. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

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

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

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

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

49. **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), and Civil 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.

50. **Post-Construction Dilapidation Report (Major Development)**

The applicant must bear the cost of all restoration works to Council's road, footpath and drainage assets damaged during the course of this development.

A Post Construction Dilapidation Report after the completion of all building works is to demonstrate that there is no damage to Council infrastructure prior to the refund of any security deposits.

Reason: To ensure security against possible damage to Council property.

51. **Certification of Council Drainage Works and Works as Executed Data**

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed Council drainage works have been constructed in accordance with this consent and the approved Section 138 approved plans. The certification and Works as Executed data (details overdrawn on a copy of the approved drainage plans) certified by a Registered Surveyor prepared in accordance with Council's Guideline for preparing Works as Executed data for Council Stormwater Assets' shall be submitted to Council for their written acceptance.

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

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

52. **Certification of Civil Works and Works as Executed Data on Council Land**

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed works that revert to Council's care and control have been constructed in accordance with this consent and the approved Section 138 plans. Works as Executed data certified by a Registered Surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data (details overdrawn on a copy of the approved civil plans) for Council Assets' in an approved format shall be submitted to Council for acceptance prior to the release of any security deposits.

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

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

53. **Garbage and Recycling Facilities**

All internal walls of the waste rooms shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

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

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

54. **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.

55. **Sydney Water**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

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

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

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

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

56. **Occupation of Seniors Housing or Housing for Persons with a Disability**

A positive covenant pursuant to Section 88E of the Conveyancing Act 1919 is to be registered on the title of the land to which this development consent applies. The covenant shall stipulate that Council is the sole authority to release or modify the covenant and that the development is only permitted to be occupied by persons detailed as follows:

- (a) seniors or people who have a disability;
- (b) people who live within the same household with seniors or people who have a disability;
- (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.

(Note: Under *State Environmental Planning Policy (Housing) 2021*):

Seniors are people aged 60 or more years, people who are resident at a facility at which residential care (within the meaning of the Aged Care Act 1997 <http://www.comlaw.gov.au/> of the Commonwealth) is provided and/or people who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider.

AND

People with a disability are people of any age who have, either permanently or for an extended period, one or more impairments, limitations or activity restrictions that substantially affect their capacity to participate in everyday life.)

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue any Interim / Final Occupation Certificate.

Reason: Statutory requirements.

57. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

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

Reason: To ensure waste and recycling facilities are provided.

58. **Positive Covenant for Council and Contractor Indemnity**

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

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

59. **Authorisation of Legal Documentation Required for Waste Services**

The original completed request form (NSW Land Registry Services form 13PC) must be submitted to Council for authorisation prior to the issue of an Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. A Compliance Certificate, issued by the Certifying Authority, shall also be provided in the submission to Council.

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

Reason: To create encumbrances on the land.

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

60. **Landscape Maintenance**

A 12 month establishment period shall apply for all new landscaping within the site.

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 amended Landscape Plan(s) and any conditions of consent.

The approved landscape area shall in perpetuity remain as planting under the development consent.

Reason: To maintain local environmental amenity.

61. **Fencing Height / Vegetation**

All fencing and/or vegetation along the frontage road(s) shall not impede pedestrian or driver visibility. This requires that vegetation does not exceed one (1) metre in height. Appropriate plants shall be selected within the 2.0 x 2.5m splay to ensure this condition is met.

Reason: To ensure maximum vehicular and pedestrian visibility.

62. **Landscaping adjoining vehicular access**

The applicant must ensure that the planting chosen for any land immediately adjacent to the point where the driveway meets the property boundary must not exceed a height of 1m

Reason: To maintain unobstructed sight distance for motorists.

63. **Parking Enclosure & landscaping**

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. Landscaping in manoeuvring areas opposite garages shall be groundcover species only

Reason: To ensure accessibility is maintained.

64. **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.

65. **Air-conditioning**

All air-conditioning units are to be located at ground floor level.

Reason: To maintain reasonable amenity for neighbouring properties owners.



SITE INFORMATION				
ADDRESS	85-87 BLACKBUTTS ROAD, FRENCHS FOREST			
SITE AREA	958m <sup>2</sup>			
LOT	LOT 2413 OF SP 732/2008			
ZONING	R2 - LOW DENSITY RESIDENTIAL			
YIELD	4.42 RESIDUAL RESIDENTIAL DWELLINGS			
SITE AREA	COMPLY	ACTUAL	COMPLY	NOT MET
SITE FRONTAGE	29m	29m	COMPLIES	
NON-DISCRETIONARY DEVELOPMENT STANDARDS				
HEIGHT	COMPLY	NOT MET	COMPLY	NOT MET
DENSITY AND SCALE	COMPLY	NOT MET	COMPLIES	
LANDSCAPED AREA	COMPLY	NOT MET	COMPLIES	
DEEP SOIL ZONES	COMPLY	NOT MET	COMPLIES	
SHOULDER ACCESS	COMPLY	NOT MET	COMPLIES	
PRIVATE OPEN SPACE	COMPLY	NOT MET	COMPLIES	
PARKING	COMPLY	NOT MET	COMPLIES	
THE BELOW CONTROLS ARE NOT REQUIRED AS SEPP HOUSING 2021 OVERIDES THE DCP. HOWEVER, WE HAVE INCLUDED THE BELOW TO SHOW WE HAVE ALSO MADE EVERY EFFORT TO MEET LOCAL GUIDELINES.				
FRONT SETBACK	WARRINGAH DCP	6.5m	6.0m	COMPLIES
SIDE SETBACK 1	WARRINGAH DCP	6.0m	1.5-4m	COMPLIES
SIDE SETBACK 2	WARRINGAH DCP	6.0m	6.4-8.5m	COMPLIES
REAR SETBACK	WARRINGAH DCP	6m	3.75-8.25m	AVERAGE COMPLIES
SIDE ENVELOPE	WARRINGAH DCP	4m		COMPLIES
WALL HEIGHT	WARRINGAH DCP	7.2m		COMPLIES

**WALSH ARCHITECTS**  
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 Walsh Architects is a registered architect  
 ACT 2024 (NSW 10364)



REV NO.	DESCRIPTION	REV DATE
1	FOR DA	15.02.23

SHEET NUMBER	SITE PLAN
1	DA100
SCALE @ A1	As indicated
85-87 BLACKBUTTS RD, FRENCHS FOREST	

**EXTERNAL FINISHES SCHEDULE**

CL01	JAMES HARSE A201 133 PROFILE OR SIMILAR - PAINT FINISH
CL02	HEATHBORO OR SIMILAR - PAINT FINISH
CL03	SECCOLAN OR SIMILAR SHADONLINE
CL04	JAMES HARSE A201 133 PROFILE OR SIMILAR - PAINT FINISH
CL05	COLORBOND ROOF SHALEGREY
CL06	COLORBOND CLADDING MONUMENT
GL01	CLEAR GLAZING
BR01	BRICK VENEER



EXTERNAL FINISHES SCHEDULE	
CL01	JAMES HARDE AXON 133 PROFILE OR SIMILAR - PAINT FINISH
CL02	HEALTHYWOOD OR SIMILAR - PAINT FINISH
CL03	DECORAD OR SIMILAR SHADOWNINE
CL04	JAMES HARDE AXON 133 PROFILE OR SIMILAR - PAINT FINISH
CL05	COLORBOND ROOF, SHALEGREY
CL06	COLORBOND GLAZING, MONUMENT
GL01	CLEAR GLAZING
BR01	BRICK VENEER



**1 NORTH ELEVATION**  
 1:50 @ A1



**2 SOUTH ELEVATION**  
 1:50 @ A1



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15 March 2023 (revised 30 June 2023)

## Submission - Clause 4.6 Exception to a Development Standard

### **State Environmental Planning Policy (Housing) 2021 – Part 5 Housing for seniors and people with a disability Clause 85(1)(a) Schedule 4 Clause 17 85-87 Blackbutts Road, Frenchs Forest**

#### **1 Proposed development and the nature and extent of exception sought**

The application seeks development consent for demolition of existing structures and Infill self-care housing for independent living under the provisions of State Environmental Planning Policy Housing 2021 (SEPP) for 4 dwellings.

An exception is sought in relation to Clause 85(1), Schedule 4, Clause 17 which requires the main bedroom to be located on the entry level (ground floor level) of dwelling 1.

- cl 85 is titled 'Development standards for hostels and independent living units'.
- cl 85 (1) states: *'Development consent must not be granted for development for the purposes of a hostel or an independent living unit unless the hostel or independent living unit complies with the relevant standards specified in Schedule 4'*.
- Schedule 4 is titled *'Standards concerning accessibility and usability for hostels and independent living units'* and contains a detailed list of specific access related requirements. The DA is accompanied and supported by an access report which addresses these requirements.
- Clause 17 of Schedule 4 states:  
*'17 Access to kitchen, main bedroom, bathroom and toilet  
In a multi-storey independent living unit, the kitchen, main bedroom, bathroom and toilet must be located on the entry level'*.

Dwelling 1, located at the front of the proposed development, does not comply with this requirement and an exception is sought.

- Rather than contain the main bedroom on the ground floor level, which could not be accommodated within the development footprint whilst maintaining compliance with the front setback control, the proposed dwelling includes an internal mechanical passenger lift connecting the ground and first floor levels within dwelling 1.
- The kitchen, bathroom, and toilet (as required by the standard) are contained at the entry level but the main bedroom is located on the first-floor level.
- All areas within dwelling 1 become accessible through the inclusion of the proposed passenger lift.

- The design of the ground floor of dwelling 1 has also considered the potential for temporary power outages during which the lift would be inoperable. In response, amended (plans dated June 2023) include a shower within the bathroom on the ground floor level. Furthermore, the applicant also agrees to ensure that a temporary bed (like a sofa bed) is kept and available for use on the ground floor of dwelling. This may form a condition of development consent. These amendments mean that a laundry, bathroom, kitchen, bed, private open space, and egress are contained on the ground floor level, meaning that the ground floor of dwelling 1 can be fully self-contained during temporary power outages.

Clause 85 of the SEPP is a development standard applicable to the assessment of the DA.

As required by LEP clause 4.6 (3) the following is a written request for the proposed development to exceed the development standard for the consent authority's consideration.

### 1.1 Key SEPP Housing provisions

Clause 85 states:

**cl 85 Development standards for hostels and independent living units**

*'(1) Development consent must not be granted for development for the purposes of a hostel or an independent living unit unless the hostel or independent living unit complies with the relevant standards specified in Schedule 4.*

*(2) An independent living unit, or part of an independent living unit, located above the ground floor in a multi-storey building need not comply with the requirements in Schedule 4, sections 2, 7-13 and 15-20 if the development application is made by, or by a person jointly with, a social housing provider.*

*Note—*

*Development standards concerning accessibility and usability for residential care facilities are not specified in this Policy. For relevant standards, see the Building Code of Australia'.*

Schedule 4 Clause 17 states:

*'17 Access to kitchen, main bedroom, bathroom and toilet*

*In a multi-storey independent living unit, the kitchen, main bedroom, bathroom and toilet must be located on the entry level'.*

### 1.2 Site details

The site is located at 85 – 87 Blackbutts Road, Frenchs Forest. The site is legally described as, Lot 2413 in Deposited Plan 752038. The site has an area of 938.1 m<sup>2</sup> (by survey). The site is slightly irregular in shape with dimensions as follows:

- Street frontage to Blackbutts Road 23.595m
- East side: 30.48m
- West side: 45.39m
- South rear: 13.845 & 13.245m



Figure 1 - excerpt of the ground floor plan showing the configuration of dwelling 1, the lift, and the location of the front setback

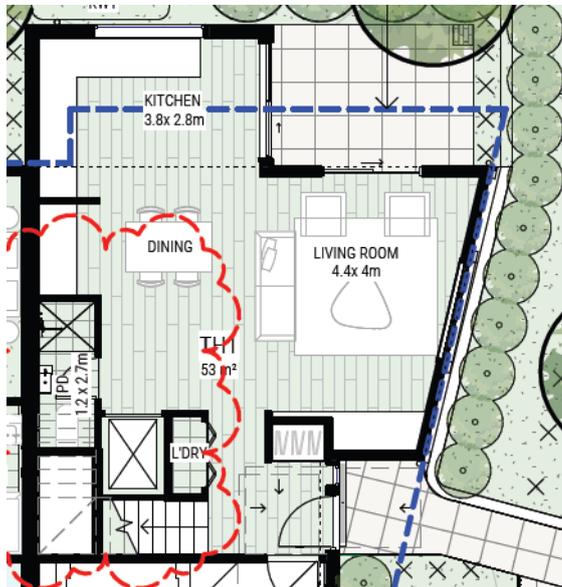


Figure 2 - excerpt of the ground floor plan showing that the proposed passenger lift is appropriately located to achieve access within the dwelling

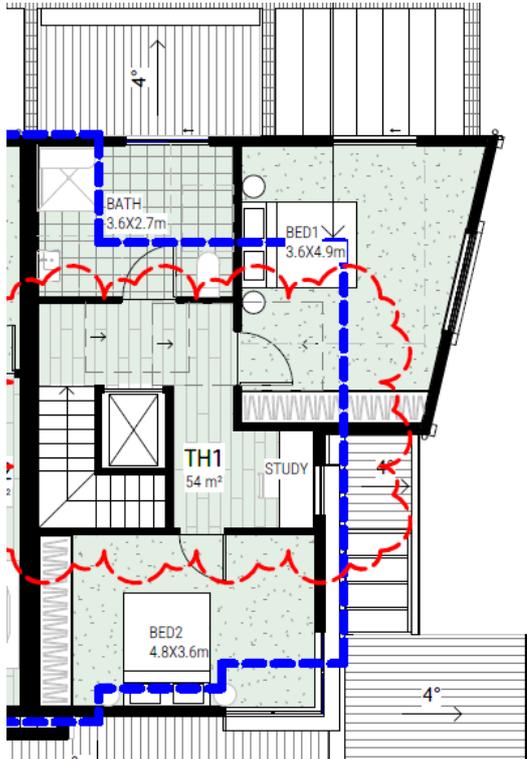


Figure 3 – excerpt of the first-floor plan showing that the proposed passenger lift is appropriately located to achieve access within the dwelling

## 2 Assessment

### 2.1 Compliance is unreasonable or unnecessary in the circumstances

Subsection 3 (a) of Clause 4.6 states:

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

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

In addressing the requirements of Clause 4.6 (3) (a), the accepted five possible approaches for determining whether compliance is unnecessary or unreasonable were established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council* (2007) LEC 827.

In the decision of *Wehbe vs Pittwater Council*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are:

1<sup>st</sup> *The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

*The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.*

2<sup>nd</sup> *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*

3<sup>rd</sup> *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*

4<sup>th</sup> *A fourth way is to 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<sup>th</sup> *A fifth way is to 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 applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.*

In response to the 5 Wehbe principles it is assessed that the third principle is relevant to the subject matter.

The underlying objective or purpose is identified to be:

- To provide housing that enables residents to age-in-place by living in housing without the need to use stairs, which due to their diminishing physical capability as they age, they may not be able to use.

The proposal satisfies this objective because the proposal is designed to enable residents to live within dwelling 1 without the need to use stairs. A vertical mechanical lift is a suitable option that addresses the principle of ageing-in-place without the need to locate the master bedroom at ground floor level. The 'alternative solution' of a lift in place of a ground level bedroom is assessed as appropriate outcome that satisfies the underlying objectives of the standard.

Insistence upon strict compliance with the standard would result in the underlying objective or purpose being defeated with the consequence that compliance is unreasonable. For these reasons it is assessed at the requirements of clause 4.6(3)(a) are satisfied and Council has the authority to grant approval to the proposal.

### 3 Environmental planning grounds

Subsection 3 (b) of Clause 4.6 states:

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

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

In accordance with 4.6 (3)(b) there are sufficient environmental planning grounds to justify the exception to the development standard the basis of the following considerations:

#### **3.1.1 *Designed to meet the specific physical needs of older people and people with a physical disability***

The proposal is designed to meet the specific physical needs of older people and people with a physical disability. The proposal is designed to enable residents to live without the need to use stairs.

A vertical mechanical lift is a suitable design solution that addresses the principle for ageing-in-place without the need to locate the master bedroom at ground floor level. The provision of a lift is consistent with the principle of ageing-in-place; for residents to continue living in dwelling 1, as they age, and their physical capabilities change.

#### **3.1.2 *Contingency during a power outage***

The property is adequately serviced by utility infrastructure including electricity that will power the proposed passenger lift.

Power outages within the local area are infrequent and for short periods of time. Notwithstanding contingency has been made within the design for the occasions when a power outage would render the lift inoperable.

The design of the ground floor of dwelling 1 has been amended (plans dated 28.06.23) to include a shower within the bathroom on the ground floor level. The applicant also agrees to ensure that a sofa bed is made available for use on the ground floor of dwelling 1. Therefore, a laundry, bathroom, kitchen, and bed are contained on the ground floor level. These provisions would mean dwelling 1 will be self-contained for a short period.

Further, a condition of consent may be included to regulate this outcome in perpetuity and for the life of the approval.

#### **3.1.3 *Consistent with the broader aims of the SEPP***

The proposed development is consistent with the broader aims of the SEPP because it will:

- provide additional housing designed to enable ageing-in-place.
- provide additional housing designed and located to meet the specific physical needs of older people and people with a physical disability.

- increase the supply and diversity of accommodation options (in addition to age care facilities, and seniors housing villages) that meet the specific physical needs of seniors or people with a disability, make efficient use of existing infrastructure and services, and be of good design.

### **3.1.4 Improved streetscape presentation**

Rather than contain the main bedroom on the ground floor level, which could not be accommodated within the development footprint whilst maintaining compliance with the front setback control, the proposed dwelling includes an internal mechanical passenger lift connecting the building levels within dwelling 1. This design solution enables compliance with the front set back control. It will result in a more desirable streetscape alignment of the proposed building, and optimal landscaped area within the front set back.

## **3.2 How does the proposed development / exception relate to the objectives of the Act?**

Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the proposal is consistent with the following objectives at under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

*(c) to promote the orderly and economic use and development of land;*  
*and*

*(g) to promote good design and amenity of the built environment, through consistent streetscape alignment and increased landscaping at the street edge.*

In response to objective 1.3(c), the exception results in a proposed residential development that will promote the orderly and economic use and development of the land:

- through purpose designed and well-located housing to meet the living needs of future residents
- that will increase the supply of housing, specific to the needs of older people and people with a disability in the R2 zone, close to public transport and a local centre, in a manner that is entirely consistent with the SEPP.

In response to objective 1.3(g), the DA will result in a residential development that will promote good design and amenity of the built environment through consistent streetscape alignment and increased landscaping at the street edge, noting the design incorporates:

- a compliant front setback
- a new and enhanced landscape planting regime within the front setback and to the site perimeter
- renewal and enhancement of the built-form on the property in a manner that satisfies the planning controls.
- housing that is responsive to its development context.

## **4 Public Interest Considerations**

### **4.1 Objectives of the development standard**

In accordance with 4.6 (4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the development standard.



The objectives of Clause 84(2)(a) Schedule 4, Clause 17 are not specifically expressed in the SEPP. It is reasonable to conclude that the underlying objectives of Clause 84(2)(a) Schedule 4, Clause 17 are to:

- To provide housing that enables residents to age-in-place by living in the housing without the need to use stairs, which due to their diminishing physical capability as they age, they may not be able to use.

The proposed development satisfies the objective because:

- The proposal is designed to enable residents to live within dwelling 1 without the need to use stairs. A vertical mechanical lift is a suitable option that addresses the principle of ageing-in-place without the need to locate the master bedroom at ground floor level. Therefore the 'alternative solution' of a lift in place of a ground level bedroom is assessed as appropriate outcome that satisfies the underlying objectives of the standard.
- The provision of the lift will allow for greater access throughout the entire independent living unit and other bedrooms compared to the other three independent living units that provide the main bedroom on ground level and don't have a lift. Therefore, the proposed lift offers a superior accessibility option and satisfies the intent of the clause.
- Three out of the four proposed units comply. It is only dwelling 1 that proposes an alternative solution.
- The proposed lift within dwelling 1 enables an additional dwelling to be provided to meet the housing needs of the community whilst maintaining compliance with the front setback control to the benefit of the proposed development's streetscape presentation.
- The provision of a lift does not impose an unreasonable use or cost burden. It is noted that future purchasers should be advised of the requirement to maintain the lift on the title of the land. Furthermore, conditions may be imposed to regulate ongoing compliance which may, for example, include regular maintenance of the lift.

Therefore the 'alternative solution' of a lift in place of a ground level main bedroom is assessed as an appropriate outcome that satisfies the underlying objective of the standard.

#### **4.2 Zone Objectives**

The proposed development will be in the public interest because it is consistent with the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out. These are stated and responded to as follows:

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

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

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

In response,

- will enable the provision of 4 new dwellings, designed to meet the specific physical needs of older people and people with a physical disability, and thereby provide for the housing needs of the community in a highly suitable location.



- will provide residential development in a manner that is respectful of, compatible with, and not disruptive to, the character of the local development context.
- will provide residential development that is compatible with the mixed residential development character within the local area, within a landscape setting, that is in harmony with the environmental conditions of the property and local area.

In conclusion it is assessed that the proposal is consistent with or not antipathetic to the objectives of the zone.

## 5 Secretary's considerations

With regards to the Secretary's considerations the proposed variation of the development standard:

- Does not raise any matter of significance for State or regional environmental planning consistent with 4.6 (5)(a).
- The public benefit is not served by maintaining the development standard consistent with 4.6 (5)(b).

## 6 Conclusion

The variation proposed to the development standard has been appropriately acknowledged and the circumstances assessed, having regard to the objectives of the control. In conclusion, Council can be satisfied that:

- this written request has adequately addressed the matters required to be addressed by cl 4.6(3) and
- that the proposed development will be in the public interest because it is consistent with the objectives of the contravened development standard and the zone, at cl 4.6(4),

The proposal should be granted development consent.

Yours sincerely,



Michael Haynes  
**Director - BBF Town Planners**



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16 March 2023

## Submission - Clause 4.6 Exception to a Development Standard

### State Environmental Planning Policy (Housing) 2021 – Part 5 Housing for seniors and people with a disability Clause 84(2)(a) site area 85-87 Blackbutts Road, Frenchs Forest

#### 1 Request for exception to Clause 84(2)(a) site area

##### 1.1 Proposed development and the nature and extent of exception sought

The application seeks development consent, for demolition of existing structures, a Seniors and Disabled Housing development, under the provisions of State Environmental Planning Policy Housing 2021 for 4 dwellings in a 1 to 2 storey built-form. The proposal is for *Infill self-care* housing for independent living.

The exception relates to Clause 84(2)(a) of the SEPP in relation to the site area being 1,000m<sup>2</sup>. Clause 84(2)(a) states:

- (1) *This section applies to development for the purposes of seniors housing involving the erection of a building.*
- (2) *Development consent must not be granted for development to which this section applies unless—*
  - (a) *the site area of the development is at least 1,000m<sup>2</sup>,*

Being 938.1m<sup>2</sup> the site area demonstrates a 6.2% / 61.9m<sup>2</sup> exception to the lot size standard. Clause 4.6 of Warringah LEP 2011 (LEP) provides a mechanism to allow an exception to a development standard.

Clause 84(2)(a) of the SEPP is a development standard and is applicable to the assessment of the proposal. This clause 4.6 submission is made to address the statutory provisions of the Act and the LEP and there is no statutory impediment to the consideration of this submission under clause 4.6.

As required by clause 4.6 (3) the following is a written request for the proposed development to exceed the development standard for the consent authority's consideration.

##### 1.2 Site details

The site is located at 85 – 87 Blackbutts Road, Frenchs Forest. The site is legally described as, Lot 2413 in Deposited Plan 752038. The site has an area of 938.1 m<sup>2</sup> (by survey). The site is slightly irregular in shape with dimensions as follows:

- Street frontage to Blackbutts Road 23.595m
- East side: 30.48m
- West side: 45.39m
- South rear: 13.845 & 13.245m



**Figure 1 – excerpt of the site plan showing the location of the site, the proposed development footprint, the subdivision pattern and the location of surrounding development. The exception relates to the area of the allotment which is 938.1m<sup>2</sup>**

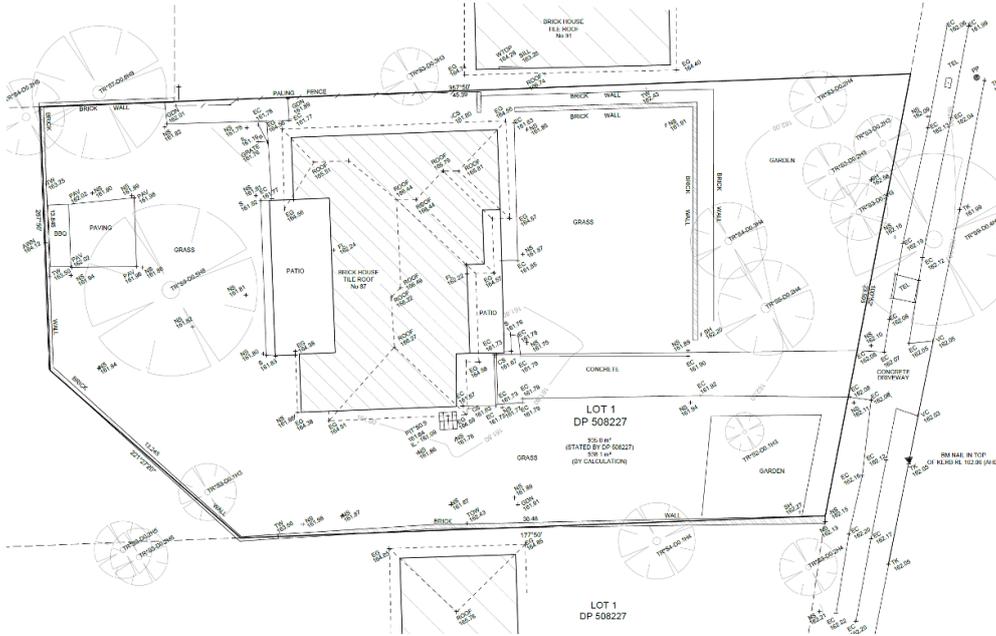


Figure 2 – excerpt of the site survey



Figure 3 – excerpt of the site survey

## 2 Clause 4.6

Relevant to the subject matter, Clause 4.6 states:

- (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.*
- (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.*

In response to the provisions of Clause 4.6, and with the guidance provided by the above judgements, the matters in support of the proposal are documented with this *written request* to justify this contravention of the development standard.

### **3 Assessment**

#### **3.1 Compliance is unreasonable or unnecessary in the circumstances**

Subsection 3 (a) of Clause 4.6 states:

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

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

Guidance is provided by the following court judgement in establishing what the relevant considerations are in assessing what is 'unreasonable or unnecessary in the circumstances of the case'.

In addressing the requirements of Clause 4.6 (3) (a), the accepted five possible approaches for determining whether compliance is unnecessary or unreasonable were established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council*. Whilst at the time, this was specific to SEPP 1, in the matter of *Four2Five* (2007) LEC 827, the Commissioner stated within the judgement the following, in reference to a variation:

*"...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1."*

In the decision of *Wehbe vs Pittwater Council* (2007) LEC 827, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are:

*1<sup>st</sup> The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

*The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.*

*2<sup>nd</sup> A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*

*3<sup>rd</sup> A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*

4<sup>th</sup> *A fourth way is to 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<sup>th</sup> *A fifth way is to 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 applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.*

In response to the 5 Wehbe principles it is assessed that the second and third principles are relevant to the subject matter. Our assessment of the proposal under clause 4.6(3)(a) finds that:

Having regard to the second principle of Wehbe, compliance with the development standard is unreasonable and unnecessary in the circumstances of the case because, despite the proposed site size exception, the proposal satisfies the various design quality and built form provisions of the SEPP, noting:

- The proposal demonstrates that the site area can physically accommodate the footprint, intensity and scale of the proposed development without having any unreasonable or excessive physical impacts on the neighbouring properties or the streetscape quality.
- The proposal incorporates appropriate compensatory design measures, in that:
  - The proposal provides generous boundary setbacks that, in various instances, significantly exceed the minimum setbacks.
  - The proposed development will not be incompatible or out of context with the visual scale and character of established development in the location.
  - The proposal complies with, and is considerably under the SEPP's height standard.
  - The proposal complies with SEPP's FSR standard.
  - The proposal complies with SEPP's Landscaped area standard.
  - The proposal reflects the pattern of development within the location.
  - The proposal will result in high internal amenity to the future dwelling occupants.
- The proposed site size exception will have an insignificant impact in terms of its physical effects on adjoining land in the areas of shadowing, privacy, bulk, scale and view impacts.
- The proposed site size exception will not result in significant or inappropriate visual impacts on the streetscape or public spaces.

These matters are further explained within this submission.

Having regard to the third principle of Wehbe, compliance with the development standard would defeat the underlying aims of the SEPP, if compliance was required, noting that:

- The proposal will increase the supply and diversity of residences that meet the needs of seniors or people with a disability;
- The proposal makes efficient use of existing infrastructure and services;
- The proposal is of good design;

- The site is positioned in an ideal location, accessible to various shops, recreation, transport links and community services;
- The proposed site size exception will not have an appropriate impact in terms of its physical impacts on adjoining land in the areas of shadowing, privacy, bulk, scale and view impacts.  
In these circumstance, strict application of the standard would result in the aims of the SEPP being defected by a proposal of high merit that satisfies the other provisions of the SEPP.

For these reasons, in the circumstances, insistence upon strict compliance with the standard would be *unreasonable or unnecessary*. For these reasons it is assessed at the requirements of clause 4.6(3)(a) are satisfied and Council has the authority to grant approval to the proposal.

#### 4 Environmental planning grounds

Subsection 3 (b) of Clause 4.6 states:

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

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

In accordance with 4.6 (3)(b) there are sufficient environmental planning grounds to justify the exception to the development standard.

The proposed exception to the site size *development standard* does not undermine or disrespect the relevance of the control or its objectives.

There are sufficient environmental planning grounds to justify contravening the development standard in the particular circumstances on the basis of the following considerations:

- The proposed exception does not result in an excessive visual building bulk or scale, maintaining an appropriate building presentation to the street frontage and neighbouring properties.
- The proposed exception in the minimum site size development standard is modest in its extent (6.2%) and it would not be perceivable in the visual presentation of the property to surrounding properties or the streetscape.
- The proposed exception does not result in a significant reduction in the quality of the proposed built form will not significantly alter the spatial characteristics of the property.
- The proposed exception will not result in unreasonable or excessive physical impacts on the neighbouring properties or the streetscape quality of the property.
- The proposed exception is capable of being accommodated on the site without imposing any significant or adverse impacts on the amenity of the surrounding land, or the scenic quality of the wider locality.
- Strict compliance with the minimum site size development standard would be unreasonable and unnecessary to the extent that the site would be unable to accommodate a form of development that is consistent with the aims and objectives of

the SEPP, in circumstances where the building form does not impose any significant or adverse impacts on the amenity of surrounding land.

- The extent of the proposed development is not excessive as a result of this exception, and the development-to-land ratio proposed, as evidenced by the proposal's compliance with the suite of built form controls relating to car parking, boundary setbacks, private open space, deep soil landscaped area, building height and floor space ratio. It is compatible to the extent of development that can be reasonably expected upon land within the R2 zone generally.
- The proposed dwellings will not result in a significant reduction in landscaped areas on the property. There remain appropriately located landscaped areas for vegetation and private recreational use. For these reasons the proposal will achieve a suitable balance between landscaped areas and the built form despite the site size exception.

#### **4.1 Unreasonable burden**

The exception does not result in inappropriate environmental impacts given that the proposal demonstrates that the site area can physically accommodate the footprint, intensity, and scale of the proposed development, in a manner that is compliant with the SEPP, without having any unreasonable or excessive physical impacts on the neighbouring properties or the streetscape quality.

There are positive impacts achieved by the development. It is therefore appropriate that the merits of the proposal on environmental planning grounds be balanced with the impact that strict compliance with the standard places on the site, and whether such strict compliance would result in a better or neutral planning outcome. The proposed exception will provide a compatible development outcome consistent with various local and State planning provisions that relate to the site.

Strict compliance in the circumstances would not achieve any significant gains with regards to the objectives for supplying a diversity of housing specific to the needs of older people and people with a disability in the R2 zone or relevant aims of the SEPP. In fact, strict compliance would defeat the aims of the SEPP which are to increase the supply of this form of housing, within accessible locations.

Based on the above, strict compliance would result in an unreasonable burden on the proposed development with insufficient environmental planning outcomes.

#### **4.2 How does the proposed development / exception relate to the objectives of the Act?**

Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the built form outcome proposed on the undersized site are consistent with the following objectives at clause 1.3 of the Environmental Planning and Assessment Act 1979 (the Act) noting the following:

*(c) to promote the orderly and economic use and development of land;*  
*and*

*(g) to promote good design and amenity of the built environment, through consistent streetscape alignment and increased landscaping at the street edge.*

- In response to objective 1.3(c), the exception results in a proposed residential development that will promote the orderly and economic use and development of the land in an efficient manner by a design that is responsive to its development context that will increase the supply of housing, specific to the needs of older people and people with a disability in the R2 zone, close to public transport and a local centre, in a manner that is entirely consistent with the SEPP.
- In response to objective 1.3(g), the proposed development results in a residential development that will promote good design and amenity of the built environment. The built form outcome has been developed through detailed site, context, privacy, and shadow analysis to ensure an appropriate contextual and streetscape fit. The building footprint has been designed to reflect the shape and orientation of the site, creating an interesting, site-specific building design that presents appropriately to each of its boundaries. The proposed development maintains high levels of residential amenity to adjoining properties by concentrating living spaces at ground floor level, minimising its height, by generous boundary setbacks and through the quality of its surrounding landscape spaces.

#### **4.3 Conclusion**

The proposal is entirely consistent with the aims of the SEPP because it will increase the supply of housing specific to the needs of older people and people with a disability in the R2 zone, close to public transport and a local centre. Based on the above, there are appropriate circumstances to support the proposed development based on the site suitability and the extent of development proposed. Conversely, there are insufficient grounds to refuse the proposal based on its site size deficit. For these reasons the proposed exception is assessed as being appropriate to the circumstances of the site, and its context. It is assessed that there are appropriate and sufficient environmental planning grounds to support the proposed exception.

### **5 Public Interest Considerations**

#### **5.1 Objectives of the development standard**

In accordance with 4.6 (4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the development standard. The objectives of Clause 84(2)(a) are not specifically expressed in the SEPP; however the aims of the SEPP are to increase the supply and diversity of dwellings that meet the needs of seniors or people with a disability, make efficient use of existing infrastructure and services, and be of good design.

It is also reasonable to conclude that the objectives of the site size control are to ensure that sites are of sufficient size to provide for buildings, vehicular access, landscaping / deep soli area, private open space, solar access and retention of natural topographical features in a manner that is positive for the future occupants of the land. Furthermore, that the property is able to be developed without incurring any reasonable physical impacts on neighbouring properties in terms of shadowing, privacy, visual impact, view loss or the natural environment.

The following submissions are made in response to the above objectives.

#### **Compensatory design measures**

Being 938.1m<sup>2</sup> the site area demonstrates a 6.2% / 61.9m<sup>2</sup> exception to the lot size standard. In response to this characteristic of the site, the following key compensatory design measures have been incorporated to address this issue and provide an appropriate building form on the site:

- **Lower building height** – The proposed building height ranges from approximately 4.8m to 7m to 8m. The height of the building is approximately 2.5 to 4.7m lower than the 9.5m building height permitted under the Seniors SEPP.
- **Increased eastern and western side setbacks** - The side setbacks have been increased and range between (on the ground floor level) approx. 6.4 to 8.5m (approx.) on the east side and between approx. 1.5 to 4m on the west side. On the first-floor level, 8.6m (approx.) on the east side and between approx. 4m on the west side

The outcome being generous separation distances to adjoining dwellings. It is noted that each of these setbacks are significantly greater than a development permitted in the R2 zone under the local planning controls.

- The proposed setbacks assist in achieving a compatible relationship with the neighbouring properties ensuring existing dwellings retain a high level of solar access, privacy and amenity levels.
- The proposed side setbacks exceed both the Seniors SEPP and the DCP's side setback requirements. Furthermore, the proposed side setbacks meet and exceed the DCP's minimum side boundary envelope requirement.

By lowering the height of the building and increasing its setbacks to adjoining residential allotments the potential amenity impacts (privacy, shading and visual) of the proposed development on the adjoining neighbours are reduced in accordance with the SEPP's aims and objectives.

- **Compliant landscaped / deep soil area, private open space and car parking** – In addition to the above it is noted that the proposed building is compliant with the SEPP's landscaped / deep soil area, private open space and car parking requirements, indicators that the proposal provides an appropriate development footprint and intensity for the site.

**Generous spatial separation is provided and high internal amenity levels to the proposed dwellings are achieved, despite the site being 938.1m<sup>2</sup> and less than 1,000m<sup>2</sup>**

- Despite the site being 938.1m<sup>2</sup> and less than 1,000m<sup>2</sup>, the proposal achieves a generous amount of spatial separation around the proposed building.
- As addressed above, the side setbacks have been increased and meet/ exceed the requirements; the outcome being generous separation distances to adjoining dwellings.
- The proposed setbacks assist in achieving a high internal amenity levels to the proposed dwellings with each dwelling meeting (and in the case of the front dwelling, exceeding) the SEPP's minimum solar access requirements. This is achieved despite the site being 938.1m<sup>2</sup> and less than 1,000m<sup>2</sup>.
- The proposed side setbacks facilitate appropriate levels of solar access to the site and high levels of privacy in relation to neighbouring properties.

**Generous landscaping and deep soil areas are provided that exceed the minimum controls, despite the site being 938.1m<sup>2</sup> and less than 1,000m<sup>2</sup>**

- Despite the site being 938.1m<sup>2</sup> and less than 1,000m<sup>2</sup>, the proposal achieves a landscaping and deep soil outcome that meets and exceeds the planning controls under the Seniors SEPP and DCP.
- The design provides a landscape setting complemented by a landscaping plan that will enhance the amenity of the site to the benefit of future occupants and the surrounding amenity. 283m<sup>2</sup> and 30.3% of the site is proposed to be landscaped area (the minimum requirement being 30%), within which the proposed building will be sited. 15.4% and 144m<sup>2</sup> of the site is proposed to be deep soil landscaped area (the minimum requirement being 15%). Each of these landscaped areas exceed the SEPP's minimum requirement).

**No significant physical impacts, despite the site being 938.1m<sup>2</sup> and less than 1,000m<sup>2</sup>**

Despite the site being 938.1m<sup>2</sup> and less than 1,000m<sup>2</sup>, the proposal will not result in any inappropriate physical or amenity impacts on the streetscape or adjoining land noting that:

- the proposal achieves a generous spatial separation around the proposed building. As addressed above, the side setbacks have been increased and meet/ exceed the requirements; the outcome being generous separation distances to adjoining dwellings.
- The physical impacts of the proposal, including, overlooking, overshadowing, visual impact and view loss have been considered. It is assessed that the proposal will not unreasonably impact upon the existing amenity or physically constrain the future development potential of the surrounding land.

In relation to shadowing impacts –

Shadow diagrams accompany and support the proposal and demonstrate that the compliance with the DCP is achieved. The following key aspects are noted:

The site and the adjoining properties have a south to north orientation to Blackbutts Road. As a result, shade will be relatively evenly shared between (mainly) the rear yard of each adjacent property.

The shadow diagrams demonstrate that shade will be cast over the rear yard, eastern side and southern portions of the dwelling at 91 Blackbutts Road in the morning time period, then over the rear yard, western side and southern portions of the dwelling at 83 Blackbutts Road during the afternoon time period. This reflects the existing development & shading pattern for properties along the southern side of Blackbutts Road, and provides a relatively even distribution of shade, consistent with the development pattern along the street.

The DCP requires:

*'2. At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21'.*

In accordance with Clause D6 of the DCP, the sunlight available to the private open space of adjoining the dwellings will not be impacted by more than 3 hours between 9am and 3pm on 22 June.

It is assessed that, whilst shade onto adjoining properties will be moderately increased above the current levels, the extent of the increase is within reasonable limits, and satisfies the DCP.

Therefore, it is concluded that the proposal will not significantly or unreasonably reduce the available sunlight to the adjoining properties and the provisions of the control are satisfied.

In relation to privacy -

Privacy has been considered in the proposed design and satisfies the DCP's objectives. The following aspects of the proposal are noted:

- The site is significantly setback from all of its boundary's. The adjacent roadway and playing fields opposite provide a significant separation to the north. Compliant setbacks are proposed to each boundary and provide generous building separation to adjoining dwellings. The proposed setbacks assist in achieving a compatible relationship with the neighbouring properties ensuring existing dwellings retain appropriate privacy and amenity levels.
- Window and door openings within the side elevations have been designed to provide high levels of privacy. A modest extent of glazing is proposed within the side elevations. In relation to the upper levels, these windows are principally associated with bedrooms and bathrooms.
- No first-floor balconies are proposed.
- The location and design of principal living areas, particularly with respect to their associated outdoor spaces is such that direct lines of sight have been minimised or avoided.
- Private open spaces are appropriately located with respect to neighbouring development, will be screened by dividing fencing and enhanced by a new landscaping regime for the property.

It is therefore concluded that the proposal will not significantly or unreasonably affect the visual privacy of the neighbouring properties.

## 5.2 Zone Objectives

The proposed development will be in the public interest because it is consistent with the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out. These are stated and responded to as follows:

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

Response -

The proposal it will contribute to the variety and supply of housing within the zone and is consistent with this objective. Further, the proposed development serves the public interest by providing additional residential accommodation within an established residential environment, offering high levels of internal amenity without imposing any significant or adverse impacts on the amenity of surrounding land.

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

Response -

The proposed development is not antipathetic to this objective of the zone.

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

Response -

The proposed development appropriately complies with the front building line in the street.

The design provides a landscape setting complemented by a landscaping plan that will enhance the amenity of the site to the benefit of future occupants and the surrounding amenity. 283m<sup>2</sup> and 30.3% of the site is proposed to be landscaped area (the minimum requirement being 30%), within which the proposed building will be sited. 15.4% and 144m<sup>2</sup> of the site is proposed to be deep soil landscaped area having a minimum dimension of 3m (the minimum requirement being 15%). Each of these landscaped areas exceed the SEPP's minimum requirement).

In conclusion it is assessed that the proposal is consistent with or not antipathetic to the objectives of the zone.

## **6 Conclusion**

The purpose of this submission is to formally request a exception to the minimum site size development standard in Clause 84(2)(a) of State Environmental Planning Policy (Housing) 2021.

The proposed exception is modest, and strict compliance with the control is unreasonable on the basis that the objectives are achieved anyway, and unnecessary on the basis that no beneficial planning purpose would be served.

The cl 4.6 request is well founded and compliance with the site size development standard would be unreasonable and unnecessary in the circumstances. There are sufficient environmental planning grounds to justify the contravention of that standard and that the proposed building would be consistent with the objectives of the standard and the zone and thereby be in the public interest.

Yours sincerely,



Michael Haynes  
**Director - BBF Town Planners**



Design + Sustainability Advisory Panel Meeting Report – Date 25 May 2023

## **Item 6 - DA2023/0304 - 87 Blackbutts Road FRENCHS FOREST**

### **PANEL COMMENT AND RECOMMENDATIONS**

#### ***General***

Council advice at pre lodgement was that the application is seeking to largely replicate the building footprint of the approved development of DA2020/0341 and notes that given general compliance with the non-discretionary provisions of SEPP Housing 2021 and similar envelope, this would justify the additional dwelling on site.

The Panel has taken into consideration the non-compliances in the existing approval in the rear setback and in the side boundary envelope controls.

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

The proposal is an improvement on the existing approval. The first-floor plan in the approved development was configured in one contiguous form whereas the current proposal better articulates the first floor as three separate masses. The Panel was of the view that the current proposal is a more appropriate response to the existing neighbourhood character.

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

The scale and built form are considered acceptable in the context of the existing approval being a benchmark.

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

The driveway/residential entry path needs to be considered as a landscaped element.

#### **Recommendation**

1. Refer *Landscape* and *Façade treatment, aesthetics*.

#### ***Landscape***

The landscape plan presented to the Panel takes into several of the Panel's previous recommendations.

#### **Recommendations**

2. TH4 courtyard should have a *Elaeocarpus reticulatus* as per the other units.
3. The Panel recommends that the OSD garden associated with TH1 have a step or ramp access into the basin space in order to maximise the use of outdoor areas for residents. To achieve this, it is suggested that a suitable turf species be used in lieu of extensive sedges and rushes as currently specified.
4. The Panel recommends that the landscape plans indicate a trellis system on the Eastern boundary wall that could support evergreen vines as specified. As noted in the *Façade treatment / aesthetics*.
5. The Panel highly recommend the inclusion of an arbour structure with appropriate climbing species to improve the visual experience of the constrained driveway space and to provide shade.
6. The Panel recommend that the proposed hedge species on the Western, Southern, and Northern boundary be substituted for a native species such as Lilli Pilli that can grow to a height above 1.8m in order to provide a good evergreen native screen.



7. T1. Mature Broad leaved Paperbark. Building footprint slightly encroaches the structural rootzone. Arborist to specifically address the requirements for protection during construction to ensure the tree remains viable.

### ***Amenity***

The Panel notes recommendations for living room skylights has been accepted. Living rooms spaces are long and narrow in proportion. The vista through living spaces from the entry to a blank wall with a highlight window is not supported.

The opportunity exists to provide windows with sun hoods to the north facades of upper bedroom and upper living room windows to improve passive solar design and improved natural cross ventilation.

The Panel notes that 15 rooms are to have dedicated air conditioning and the location of condenser units has not been addressed.

### **Recommendations**

8. Provide a full height glazed return to the Living Room north facing window wall so that a vista to outside is achieved at the entry point. Ensure landscape screen planting or privacy screens are provided to the window return to prevent side boundary overlooking to neighbours private open space.
9. Increase the width of living spaces to the maximum possible by reducing the bedroom width to the minimum possible. i.e. 1.2m from the foot of the bed to robe. Reduce the length of the Living room to maintain current FSR. This will increase side boundary setbacks and landscape screening areas slightly.
10. Provide windows with sunhoods to upper rooms with north facades.
11. The drawings should identify the location of all condenser units for air conditioning/hot water. The location should not be in private open space or areas where it will affect the amenity of adjoining dwellings or areas visible from the public domain or the shared entry space. Enclosures should be integrated into the existing building envelope and should not be roof mounted.

### ***Façade treatment/Aesthetics***

The façade to the driveway shared entry zone reads as a wall of garage doors.

### **Recommendations.**

12. Ensure the garage doors are high quality natural finishes such as timber sectional lift doors.
13. Reduce the width of each garage doors to approximately 3.8m. This will allow adequate access for bikes and wheelchairs to the garage while a car is parked.
14. Provide planted trellises for creepers across the driveway to create a garden character to the shared entry space.



### ***Sustainability***

The revised design will require the BASIX to be updated.

The BASIX Certificate indicates gas instantaneous which is not recommended. Note that BASIX has updated its greenhouse gas emissions factors and the calculations associated with heat pumps and (induction cooktops).

The use of PV to offset BASIX Energy in TH4 is commended.

The Panel notes that NCC 2022 requires new Class 1a dwellings built after October 1, 2023, must have at least a 7-star NatHERS rating.

The applicant has stated they are not obliged to adopt the sustainability recommendations set out in the previous report. However, some of these are zero or minimal cost (e.g. ceiling fans) and others may be required to meet BASIX (e.g. the PVs).

Therefore, it is recommended that the applicant provides a more reasonable approach to demonstrate their consideration of sustainability initiatives, and the Panel's previous recommendations still apply:

### **Recommendations**

15. Confirm 7-star NatHERS is achieved for each dwelling.
16. All services should be electric – gas for cooking, hot water and heating should be avoided.
17. Heat pump systems for apartments or other ways of providing electric hot water should be considered.
18. The storage of hot water can be considered a de facto battery if heated by PVs during the day.
19. Provide ceiling fans to all bedrooms and living rooms.
20. Provide outdoor drying areas for each dwelling.
21. Onsite power generation and battery storage. On site battery storage has benefits for the grid and may be a highly desirable back-up during the transition to a de-carbonised grid.
22. Unshaded roof space is a valuable resource for PV installations.
23. Provide PV solar as per TH4 to all other dwellings to offset electrical loads.
24. EV charging: Provide EV charging points for each unit (Min 15 amp) to suit level 1 charging.
25. Passive design and thermal performance of building fabric.



26. The Panel notes that higher energy standards are under consideration by the Department of Planning in the document 'BASIX Higher Standards- Proposed changes for feedback'. Available here <https://pp.planningportal.nsw.gov.au/draftplans/under-consideration/basix-higher-standards>.
27. The Department advises that the higher BASIX thermal performance standards will be at least average 7 stars NatHERS rating system and minimum 6 stars any dwelling. This consistent with what the Federal Government proposes for the National Construction Code for 2022. Given the coastal location a very comfortable indoor environment should be achievable.

## **PANEL CONCLUSION**

**The Panel supports the proposal subject to the recommendations above being incorporated.**