

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

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

WEDNESDAY 22 NOVEMBER 2023

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



Peter Robinson
Executive Manager Development Assessment

Quorum

A quorum is three Panel members

Conflict of Interest

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

Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 22 November 2023

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Northern Beaches Local Planning Panel held 15 November 2023.....	3
3.0	CATEGORY 3 APPLICATIONS	
4.0	PUBLIC MEETING ITEMS.....	5
4.1	DA2023/0285 - 1 Bluegum Crescent, FRENCHS FOREST - Demolition works and construction of a residential flat building with basement car parking including strata subdivision.....	5
4.2	DA2022/1950 - 23 Ashburner Street, Manly - Demolition works and construction of a dwelling house including swimming pool	182
4.3	DA2023/0067 - 79 Ashworth Avenue, BELROSE - Demolition works and subdivision of one (1) lot into two (2) lots	234
5.0	NON PUBLIC MEETING ITEMS.....	293
	A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. These applications do not satisfy that criterion.	
5.1	DA2023/0849 - 1/63-67 The Corso, MANLY - Alterations and additions to a commercial premise	293

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 15 NOVEMBER 2023

RECOMMENDATION

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 15 November 2023 were adopted by the Chairperson and have been posted on Council's website.

4.0 PUBLIC MEETING ITEMS

ITEM 4.1 DA2023/0285 - 1 BLUEGUM CRESCENT, FRENCHS FOREST -
DEMOLITION WORKS AND CONSTRUCTION OF A
RESIDENTIAL FLAT BUILDING WITH BASEMENT CAR
PARKING INCLUDING STRATA SUBDIVISION

AUTHORISING MANAGER Steve Findlay

TRIM FILE REF 2023/732906

ATTACHMENTS 1 [↓](#) Assessment Report
 2 [↓](#) Site Plan & Elevations
 3 [↓](#) Clause 4.6
 4 [↓](#) Design and Sustainability Advisory Panel Report

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection and the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards and it is a development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/0285 for Demolition works and construction of a residential flat building with basement car parking including strata subdivision on land at Lot 62 DP 30700, 5 Bluegum Crescent, FRENCHS FOREST, Lot 61 DP 30700, 3 Bluegum Crescent, FRENCHS FOREST, Lot 59 DP 30700, 142 Frenchs Forest Road West, FRENCHS FOREST, Lot 60 DP 30700, 1 Bluegum Crescent, FRENCHS FOREST subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0285
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 62 DP 30700, 5 Bluegum Crescent FRENCHS FOREST NSW 2086 Lot 61 DP 30700, 3 Bluegum Crescent FRENCHS FOREST NSW 2086 Lot 59 DP 30700, 142 Frenchs Forest Road West FRENCHS FOREST NSW 2086 Lot 60 DP 30700, 1 Bluegum Crescent FRENCHS FOREST NSW 2086
Proposed Development:	Demolition works and construction of a residential flat building with basement car parking including strata subdivision
Zoning:	Warringah LEP2011 - Land zoned R3 Medium Density Residential WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Gregory Harold Nelson
Applicant:	Castle 58 Pty Ltd
Application Lodged:	27/03/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	10/10/2023 to 24/10/2023
Advertised:	10/10/2023
Submissions Received:	18
Clause 4.6 Variation:	4.3 Height of buildings: 21.15%
Recommendation:	Approval
Estimated Cost of Works:	\$ 21,875,000.00

EXECUTIVE SUMMARY

Introduction

The application is reported to the Northern Beaches Local Planning Panel for multiple reasons including; the application attracted more than 10 submissions in objection, proposes a variation of greater than 10% to the building height development standard, and is subject to State Environmental Planning Policy No 65 (SEPP 65) and is more than 4 storeys in height.

The site is zoned R3 Medium Density Residential within the Frenchs Forest Road West Neighbourhood of the Frenchs Forest Town Centre and is subject to the Frenchs Forest Precinct controls of Warringah Local Environmental Plan 2011 (WLEP) and Warringah Development Control Plan 2011 (WDCP). These controls were developed in response to the Frenchs Forest 2041 Place Strategy and the subject application is one of the first lodged in the precinct following the introduction of the new planning controls.

The proposal seeks to amalgamate four (4) lots and construct a residential flat building comprising two interconnected buildings and containing 44 apartments. The proposal contributes to the intent of the Frenchs Forest 2041 Place Strategy's target of providing 2000 new dwellings within the precinct.

The site adjoins land zoned R2 Low Density Residential to the north and is subject to site specific built form controls that seek to address this sensitive interface. Surrounding properties to the east and west in proximity to Frenchs Forest Road West are zoned R3 Medium Density Residential, but generally comprise detached dwelling houses and as yet have not been redeveloped in accordance with their medium density zoning.

The site is uniquely constrained by its irregular topography and the prohibition on vehicular access via Frenchs Forest Road West. These natural and planning related constraints have resulted in a design which involves a Clause 4.6 variation request in relation to building height, which is discussed in more detail below.

Clause 4.6 Variation

The proposal seeks a variation to the building height development standards applicable to the site, including **Building A**, which is subject to a building height of 13m and has a maximum height of 15.75m, representing a variation of 21.15%. **Building B**, which is subject to a building height of 17.5m and has a maximum height of 19.9m, representing a variation of 13.7%.

The applicant has submitted a Clause 4.6 written request in support of the proposed variation to the building height standards. As detailed in this report, it is considered that the applicant's written request to vary the building height standard is well-founded and adequately justifies the variation given the site-specific circumstances.

The primary justifications for the building height variations are found to be the impacts of the unusual topography - the site slopes steeply from east to west and has a valley centrally to the site - and the prohibition on vehicular access to the site from Frenchs Forest Road West. The combination of these factors dictated that vehicular access was to be provided from the high point of the site, which prevents the car parking levels being provided below ground. The protrusion of the car parking levels creates a podium that essentially sets the levels of the residential floors above.

In a circumstance where the topography of the site was not so steep or vehicular access from the low point of the site was permitted, it is anticipated that the car parking levels would be contained predominantly below ground and the residential floors above would be at or closer to ground level, thus lowering the overall height of the development. These matters relate to environmental planning grounds (EPG's) 1 and 3 put forward by the applicant and are found to sufficiently justify the variation sought. Considering the acceptance of these EPG's, grounds 2, 5, 6 and 7 relating to design,

development potential and provision of affordable housing are also accepted as environmental planning grounds in this case.

The proposal is considered to achieve the objectives of the building height development standard, such that it is compatible with the intent of the planning controls and desired future character and will not adversely impact the amenity of surrounding properties. As assessed against the provisions of Clause 4.6, the variations to the building height standards are supportable in this case.

The application was referred to Council's Design and Sustainability Advisory Panel for review. The Panel were unsupportive of the proposal as the concerns previously raised in relation to the pre-lodgement application were not adequately addressed. Following this review, the proposal was amended as described in the detailed description section of this report. The amended proposal is considered to adequately resolve the concerns raised by the Panel in that it achieves substantial improvements in relation to the overall design outcome, compliance with the applicable controls and minimisation of impacts to surrounding properties and the public domain.

Public Consultation

The application was publicly exhibited in accordance with Council's Community Participation Plan, whereby the proposal was notified to 62 surrounding properties. In response to Council's exhibition, a total of 18 submissions were received, all of which were in objection to the proposal. The issues raised in the submissions are addressed in this report and are broadly categorised as follows:

- Building height variation;
- Bulk and scale, character impacts;
- Setbacks and amenity impacts;
- Landscape outcome;
- SEPP 66 and Apartment Design Guide compliance;
- Traffic, parking and infrastructure impacts; and
- Demolition, excavation and construction impacts.

The proposal has been amended in such a way that the building height variation is reduced, the western side setbacks are increased, and additional canopy trees are provided. The amendments made to the proposal are considered to result in an improvement in the proposal's compliance with the controls and a reduction in the associated visual and amenity impacts. A detailed assessment of each of the concerns raised is undertaken in this report and conditions are recommended where necessary to address privacy and demolition, excavation, and construction impacts. No matters raised in the submissions would justify the refusal of the application in the public interest.

General Planning Comments

The proposal is one of the first submitted to Council under the Frenchs Forest Precinct controls gazetted on 1 June 2022. The height, scale and density of the amended proposal is compatible with that envisaged in the Frenchs Forest 2041 Place Strategy and the associated planning controls, notwithstanding the building height variation. The development responds appropriately to the site characteristics and constraints, minimises impacts to surrounding properties and contributes to the provision of new dwellings and affordable housing within the locality.

Conclusion and Recommendation

On balance, the proposal is considered to satisfy the relevant planning controls and has sufficient merit to be recommended for approval to the Northern Beaches Local Planning Panel, subject to the conditions included in the Recommendation of this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for demolition works and the construction of a residential flat building development comprising two buildings (Building A and Building B) over a common basement/semi-basement car park.

Specifically, the development proposes:

- Demolition of all existing dwelling and ancillary structures;
- Tree removal;
- 2 x car parking levels accommodating 45 residential spaces, 5 visitor spaces, 6 car share spaces, 1 car wash bay and 22 motorcycle bays, storage, garbage and plant rooms;
- **Building A** - 15 apartments over 4 levels (inclusive of 4 affordable housing dwellings)
- **Building B** - 29 apartments over 5 levels (inclusive of 3 affordable housing dwellings), in addition to a ground floor communal room;
- New driveway, crossing and waste collection/loading zone;
- Landscaping including a communal open space area; and
- Bin store, electrical kiosk and stormwater infrastructure.

The following photomontages illustrate the general character, design, and external appearance of the proposal:



VIEW OF CORNER FRENCHS FOREST RD & BLUEGUM CREK



STREET ELEVATION - BLUEGUM CRESCENT

Amendments to the Proposal

Post the lodgement of the application, the following amendments were made to the proposal:

- Reduced front setback to Bluegum Crescent and subsequent increased western side setback;
- Increased Building B upper-level western side setback and southern setback to Frenchs Forest Road West;
- Additional canopy trees;
- PV panels to roofs;
- Provision for future connection of additional EV charging devices;
- Increased deep soil areas to the west of the building;
- Modified apartment mix;
- Inclusion of strata subdivision as part of the proposal; and
- Amended stormwater design.

In addition to the above built form amendments, the application also seeks to include strata subdivision as part of the proposal.

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
 Assessment - Special Infrastructure Contributions (Frenchs Forest) Determination 2021
 Warringah Local Environmental Plan 2011 - 2.5 Additional permitted uses for particular land
 Warringah Local Environmental Plan 2011 - Zone R3 Medium Density Residential
 Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
 Warringah Local Environmental Plan 2011 - 6.11 Affordable housing
 Warringah Local Environmental Plan 2011 - 8.5 Design excellence—Sites F, G and I
 Warringah Local Environmental Plan 2011 - 8.10 Power lines—Site G
 Warringah Development Control Plan - C2 Traffic, Access and Safety
 Warringah Development Control Plan - D3 Noise
 Warringah Development Control Plan - D6 Access to Sunlight
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D15 Side and Rear Fences
 Warringah Development Control Plan - D18 Accessibility and Adaptability
 Warringah Development Control Plan - 2 Desired future character
 Warringah Development Control Plan - 5.2 Precinct 05 Frenchs Forest Road West Neighbourhood
 Warringah Development Control Plan - 6 Parking

SITE DESCRIPTION

Property Description:	Lot 62 DP 30700 , 5 Bluegum Crescent FRENCHS FOREST NSW 2086 Lot 61 DP 30700 , 3 Bluegum Crescent FRENCHS FOREST NSW 2086 Lot 59 DP 30700 , 142 Frenchs Forest Road West FRENCHS FOREST NSW 2086 Lot 60 DP 30700 , 1 Bluegum Crescent FRENCHS FOREST NSW 2086
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<p>Detailed Site Description:</p>	<p>The subject site consists of four (4) allotments located on the north-western Corner of Bluegum Crescent and Frenchs Forest Road West.</p> <p>The site is generally rectangular in shape with a frontage of 70.34m along Bluegum Crescent, a frontage of 35.26m along Frenchs Forest Road West and a 5.17m corner splay. The site has a surveyed area of 2897.8m².</p> <p>The site is located within the R3 Medium Density Residential zone and Site G of the Frenchs Forest Town Centre. The site is also identified in the Frenchs Forest 2041 Place Strategy as being within the Frenchs Forest Road West Neighbourhood Centre.</p> <p>The site presently accommodates four detached dwelling houses and contains 60 trees in addition to a range of smaller planted vegetation.</p> <p>The site generally slopes from east to west with a maximum fall of approximately 11m. There is also a depression or valley that runs east-west through the central portion of the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by detached dwelling houses. Forest Height School (Site F) is located across Frenchs Forest Road West to the south and the Northern Beaches Hospital is located to the south-east.</p>
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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:

PLM2022/0207 - Construction of a Residential Flat Building

On 8 December 2022, a pre-lodgement meeting was held between Council and the Applicant.

Council's written advice concluded that:

"In summary, it is recommended that the application is amended to address the issues raised in these notes and the DSAP report before the final DA is lodged."

As part of the pre-lodgement, the proposal was referred to Council's Design and Sustainability Advisory Panel (DSAP) for review.

The DSAP Report included a total of 31 recommendations in relation to the proposed development, generally relating to:

- Strategic context, urban context: surrounding area character;
- Scale, built form and articulation;
- Access, vehicular movement and car parking;
- Landscape;
- Amenity;
- Façade treatment/Aesthetics; and
- Sustainability.

The DSAP Report concluded that:

"The Panel does not support the proposal in its current form. The Panel acknowledges that this is a Pre-DA proposal for development on a site with a challenging topography. The Panel recommends further testing of site layouts, setbacks, heights as recommended above, to optimise amenity, landscape and development outcomes."

DA2023/0285 - Demolition works and construction of a residential flat building with basement car parking, including strata subdivision (Current DA)

On 27 March 2023, the current application was submitted to Council.

On 27 April 2023, the DA was referred to Council's DSAP for review. The Panel remained unsupportive of the proposal as it was not found to have adequately responded to the recommendations made in relation to PLM2022/0207.

The DSAP Report included a total of 12 recommendations in relation to the proposed development, generally relating to:

- Strategic context, urban context: surrounding area character;
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- Scale, built form and articulation;
- Access, vehicular movement and car parking;
- Landscape;
- Amenity;
- Façade treatment/Aesthetics; and
- Sustainability.

The DSAP Report concluded that:

"The Panel does not support the design as it remains essentially unchanged from that submitted at Pre-DA stage."

On 2 August 2023, Council wrote to the Applicant requesting the amendment of the Development Application to address concerns generally relating to:

- Building height;
- Amenity impacts;
- Landscaping, Development Engineering, Water Management, Traffic and Waste referral comments; and
- Recommendations made by the DSAP.

On 28 September 2023, an amended proposal was submitted in response to Council's concerns. This amended proposal was re-notified and advertised from 10 October to 24 October 2023.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.

<p>Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)</p>	<p>Part 4, <u>Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p>Clause 35A of the EP&A Regulation 2021 prescribes that a person must not apply to a consent authority for development consent to carry out development on land in the Frenchs Forest Precinct unless the application is accompanied by an assessment of the consistency of the proposed development with the Frenchs Forest 2041 Place Strategy. This information has been provided to support the application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation in the form of amended plans and supporting information to address various concerns raised by Council.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent</p>
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Section 4.15 Matters for Consideration	Comments
	<p>authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent..</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (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 10/10/2023 to 24/10/2023 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 18 submission/s from:

Name:	Address:
Mrs Linda Fran Bush	6 Bluegum Crescent FRENCHS FOREST NSW 2086
Socrates Mariatos	1 Sylvia Place FRENCHS FOREST NSW 2086
Mr Justin Jeffrey Ewin	17 Sylvia Place FRENCHS FOREST NSW 2086
Mr Eric John Galloway	5 Turella Close BELROSE NSW 2085
Mr Rodney William Oliver Mrs Jane Oliver	39 Bluegum Crescent FRENCHS FOREST NSW 2086
Bill Tulloch	Po Box 440 MONA VALE NSW 1660
Mr Victor Petersen	15 Bluegum Crescent FRENCHS FOREST NSW 2086
Mrs Patricia Gai Shepherd	21 Cobb Street FRENCHS FOREST NSW 2086
Peter Arnold Clark	16 Bluegum Crescent FRENCHS FOREST NSW 2086
Michael Alexander Filatoff Helen Ruth Filatoff	10 Bluegum Crescent FRENCHS FOREST NSW 2086
Mrs Coralie Joy Rose	14 Cobb Street FRENCHS FOREST NSW 2086
Marie Elizabeth Dougall	24 Sylvia Place FRENCHS FOREST NSW 2086
Ms Caroline Zoe Sims	19 Sylvia Place FRENCHS FOREST NSW 2086
Mr John William O'Sullivan	27 Bluegum Crescent FRENCHS FOREST NSW 2086
Mr Bruce Foreman	26 Sylvia Place FRENCHS FOREST NSW 2086
Tommy Knudsen	23 Sylvia Place FRENCHS FOREST NSW 2086
Nyeong Lee	22 Sylvia Place FRENCHS FOREST NSW 2086
Mr Paul Walter Kolbe	11 Bluegum Crescent FRENCHS FOREST NSW 2086

The issues raised in the submissions are addressed as follows:

- **Building height variation**

The submissions raised concerns that the proposed building height variation would be inconsistent with the existing and desired character of the locality and would cause adverse visual amenity impacts upon surrounding properties. Concern was also raised that the height variation would set an adverse precedent for future development in the locality and is not adequately justified in the applicant's Clause 4.6 written request.

Comment:

The proposed building height variations are assessed in detail in the Clause 4.6 section of this report. The locality is undergoing a transition to medium density character and the proposed variations are not considered to preclude consistency with the desired future character as set out in the WDCP controls. The design and location of the height-breaching elements minimise the resulting visual and amenity impacts and ensure that the development achieves

consistency with the objectives of the height standard. The circumstances justifying the proposed building height breaches are specific to the subject site/development and would not set a precedent for future development in the locality. The applicant's written request is found to be successful in justifying the proposed variations.

This matter is not considered to warrant refusal of the application.

- **Bulk and scale, character impacts**

The submissions raised concerns that by virtue of its height, bulk and scale, the proposal would be inconsistent with the existing and desired character of the streetscape and broader locality and represents an overdevelopment of the site. Concerns were also raised that the density of the proposal is excessive for the site and that the proposal fails to achieve 'Design Excellence'.

Comment:

The bulk, scale and massing of the development is generally consistent with what could reasonably be expected to be developed on the land pursuant to the applicable medium density controls, notwithstanding the proposed building height breaches. The proposal complies with the FSR control applicable to Buildings A and B, and the separation between the built forms assists in reducing visual bulk. In the absence of specific density controls applicable to the site, the appropriate level of density is dictated by the envelope prescribed by the controls. For the reasons discussed in this report, the proposal is found to be of appropriate proportions and density that are compatible with the future character of the streetscape and the locality and exhibits design excellence.

These matters are not considered to warrant refusal of the application.

- **Setbacks and amenity impacts**

The submissions raised concerns that the proposed setbacks to the building and car park are insufficient and would cause adverse impacts with regard to privacy and solar access. Concern was also raised that the proposal would impact upon the future redevelopment of adjoining properties fronting Sylvia Place.

Comment:

As assessed in detail in relation to the SEPP 65/ADG and WDCP controls, the proposed setbacks and separation distances afforded by the amended proposal are sufficient to minimise impacts on privacy and solar access for adjoining properties. A condition is recommended to minimise overlooking impacts from the north-facing living room windows of apartments A105 and A205, given their orientation towards the adjacent R2 zoned property. The proposal will not prejudice the future redevelopment of the adjoining properties to the west.

These matters are not considered to warrant refusal of the application.

- **Landscaping**

The submissions raised concerns that the proposal includes excessive tree removal and provides an insufficient landscaped area to achieve an appropriate landscape outcome for the site.

Comment:

The amendments made to the proposal have attempted to minimise the loss of existing trees and include compensatory tree planting at a ratio of 2:1. Council's Landscape section has reviewed the amended proposal and raised no objections in relation to the tree removal or the landscape design. The landscaped area proposed in the form of deep soil and on-slab landscaping is satisfactory in relation to the SEPP 65/ADG and WDCP requirements, as assessed in detail in this report.

These matters are not considered to warrant refusal of the application.

- **SEPP 65 and Apartment Design Guide**

The submissions raised concerns that the proposal does not achieve an appropriate outcome in relation to the provisions of SEPP 65 and the ADG.

Comment:

A detailed assessment of the proposed development against the provisions of SEPP 65 and the ADG has been undertaken. For the reasons discussed in this assessment, the proposal is found to be satisfactory with regard to the Design Quality Principles of SEPP 65 and the relevant controls contained within the ADG.

These matters are not considered to warrant refusal of the application.

- **Traffic, parking and infrastructure**

The submissions raised concerns regarding the traffic and parking implications of the proposed development. Concern was also raised in relation to the adequacy of existing infrastructure given the increase in density within the locality.

Comment:

The proposal includes a compliant provision of car parking in accordance with the WDCP controls. The application is accompanied by a Traffic and Parking Report and has been reviewed by Council's Traffic Section, who raises no concerns in this regard. In relation to on-street car parking, it is noted that the proposal will result in the replacement of four separate driveways with one consolidated vehicle crossing and loading zone. Recommended conditions of consent require the preparation and implementation of demolition and construction traffic management plans to minimise impacts on residential amenity and traffic safety associated with the development. The proposal, if approved, is subject to the Frenchs Forest Special Infrastructure Contributions (SIC) scheme levied on developers, the funds from which will contribute to the required future upgrades to infrastructure as the precinct is developed.

These matters are not considered to warrant refusal of the application.

- **Demolition, excavation and construction impacts**

The submissions raised concerns that the demolition and construction works associated with the proposal would interfere with the amenity of surrounding properties.

Comment:

Appropriate conditions of consent are recommended to minimise the disturbance caused to surrounding properties during demolition, excavation and construction works. The recommendations of the submitted geotechnical report are incorporated into the conditions of consent, along with a requirement to undertake pre- and post-construction dilapidation surveys of all adjoining properties.

This matter is not considered to warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	<p>NOT SUPPORTED (Based on DA as lodged)</p> <p>The application was referred to the DSAP for consideration and comment.</p> <p>The DSAP raised a number of issues with the design of the development and did not support the proposal. The Panel made a total of 40 recommendations, through both the Pre-DA and DA review stages, to improve the design quality, contextual fit, landscape outcome and sustainability of the proposal.</p> <p>The applicant has sought to respond to the DSAP recommendations through the amended proposal (including the submission of an itemised written response).</p> <p>Each of the Panel's recommendations are listed below with commentary from the assessing planner.</p> <p><u>Recommendations</u></p> <p><i>Strategic context, urban context: surrounding area character</i> PLM Review</p> <p><i>1. Alternative layouts and site planning strategies should be investigated to achieve the objectives of the Frenchs Forest 2041 Place Strategy and to provide an acceptable interface to the surrounding low density residential areas;</i></p> <p><u>Comment:</u> The proposed site layout is considered to be appropriate in relation to built form, internal amenity and interfaces with adjoining properties including the R2 zone to the north. These matters are discussed in further detail under the SEPP 65/ADG assessment and are found to be acceptable.</p> <p><i>Scale, built form and articulation</i> PLM Review</p> <p><i>2. Investigate reducing the front setback from Bluegum Crescent from 6.5m to 4.5m. This front setback area is to contain a maximum</i></p>

Internal Referral Body	Comments
	<p><i>of 25% private open space to allow for ground floor ADG POS compliance. The remaining 75% area is to be deep soil that is landscaped with mature trees and understorey planting and will be maintained by the body corporate gardener (see Landscape comments);</i></p> <p><i>3. The entire length of the basement carpark could be set back a minimum of 6 metres from the western boundary. The 6m setback zone could be deep soil with mature trees and understorey planting that will be maintained by the body corporate gardener (see Landscape comments);</i></p> <p><u>Comment:</u> The proposal has been amended in response to recommendations 2 and 3 - the building has been moved approximately 1.5m towards the Bluegum Crescent frontage and now provides a minimum setback of 6.1m to the western boundary, which contains a mix of understorey, mid-storey and canopy planting. The amended siting is such that the minimum setback to the eastern boundary is 4.5m but is compliant with the 6.5m setback for the majority of the built form of Building A, ensuring an appropriate transition to the adjacent R2 zone. The eastern setback area comprises substantial deep soil planting and adequate private open space areas are provided for each of the ground floor apartments. The design response to these recommendations is considered acceptable.</p> <p><i>4. Building A should comply with the DCP 45-degree height plane at the north-western corner;</i></p> <p><u>Comment:</u> The amended proposal reduces the extent of the non-compliance with the height plane control at the north-western corner of Building A, such that it is limited to a 4.2m x 0.7m section of balustrade. As assessed in this report, the encroachment will not cause any unreasonable visual or amenity impacts. The design response to this recommendation is considered acceptable.</p> <p><i>5. Building A and Building B should comply with the ADG building setbacks from side boundaries along the western boundary, with the 2 parking levels being storeys;</i></p>

Internal Referral Body	Comments
	<p><u>Comment:</u> The amended proposal complies with the required ADG building separation distances at the western boundary, with the exception of Level 3 of Building B. As assessed against Objective 3F-1 of the ADG, the proposal is found afford adequate separation distances to maintain privacy between the subject development and the adjoining properties. The design response to this recommendation is considered acceptable.</p> <p><i>6. Ground and first floor levels of Building B should be set back 6m from the western boundary;</i></p> <p><i>7. Levels 2, 3, 4 and 5 of Building B should be set back 9m from the western boundary, except for the zero-lot line part of the building addressing Frenchs Forest Road;</i></p> <p><u>Comment:</u> The amended proposal provides setbacks of 6.1m and 8.2m respectively to the ground (B1) and first floor (GF) levels of Building B as recommended. A 7.5m setback is provided to Levels 1, 2 and 3 and the uppermost level is set back 11.4m. The recommended 9m setback is considered unreasonable given that it would exceed the separation distances required by the ADG. The design response to these recommendations is considered acceptable.</p> <p><i>8. Building B could have a maximum building height of 6 storeys along Frenchs Forest Road and Bluegum Crescent. But may exceed the numeric height limit;</i></p> <p><i>9. The top floor of Building B could be set back from the western boundary above the carpark so that the overall building height is 6 storeys in any place along the Frenchs Forest Road frontage;</i></p> <p><u>Comment:</u> Building B is a maximum height of 6 storeys at the Frenchs Forest Road West frontage as Level B1 protrudes above ground level for a portion of the frontage. The amended proposal includes an increase to the western setback of the uppermost floor of Building B to minimise its visual prominence. Building B presents as 5 storeys at the Bluegum Crescent frontage. The design response to these recommendations is considered acceptable.</p> <p><i>10. The top floor of Building B should be set back from Frenchs Forest Road in accordance with the development controls;</i></p> <p><u>Comment:</u> The amended proposed provides an increased setback of 3.5m from the Frenchs Forest Road West street wall in accordance with the WDCP control. The design response to this recommendation is considered acceptable.</p> <p><i>11. Test alternative site layouts within the above setbacks and heights to minimise impacts on the neighbours and minimise the visibility of the car ramp and waste bin areas;</i></p>

Internal Referral Body	Comments
	<p><u>Comment:</u> The site layout has been amended as described above. The location of the car ramp and bin holding area are largely dictated by the topography and the requirements of Council's Waste Management Design Guidelines. These areas are suitably designed and landscaped to minimise their visual impact on the streetscape. The design response to this recommendation is considered acceptable.</p> <p>Access, vehicular movement and car parking PLM Review</p> <p><i>12. Test car park layouts and ramp configurations to assist in achieving desirable built form and deep soil outcomes;</i></p> <p>DA Review</p> <p><i>13. Clustering of driveway, pedestrian entrance and bin stores will not create a quality arrival experience for residents or visitors – clarify as part of any re-design;</i></p> <p><u>Comment:</u> The basement/semi-basement car park has been re-located 1.5m towards the Bluegum Crescent to maximum deep soil across the site while maintaining adequate setbacks to the street frontage. The driveway and bin store are screened from the pedestrian entry and a suitable entry arrangement is provided. The design response to these recommendations is considered acceptable.</p> <p>Landscape PLM Review</p> <p><i>14. Install more endemic large canopy trees to reduce the density and visual impact of the proposed buildings and site works;</i> <i>15. Maintain at least a 1:1 existing tree removal/ New tree replacement i.e. 43 trees as a mix of small, medium and large canopy species. This should include the replacement of minimum 9 endemic canopy species including Angophora and Eucalyptus species;</i> <i>16. Ensure these large trees have suitable soil volumes over slab or deep soil to reach their full potential;</i></p>

Internal Referral Body	Comments
	<p><u>Comment:</u> Additional canopy trees have been incorporated into the amended landscape design and the proposal includes a 2:1 replacement of prescribed trees. Council's Landscape Officer is supportive of the overall landscape outcome including soil depths for on-slab planting. The design response to these recommendations is considered acceptable.</p> <p><i>17. Explore non trafficable (extensive) green roof to top level in combination with PV panels to mitigate heat Island effect of roofs and ecological outcomes and stormwater detention;</i></p> <p><u>Comment:</u> The green roof recommendation has not been taken up. The PV array covers the majority of the roof top and a sufficient quantity of deep soil and on-slab landscaping is provided across the development. The applicant advises that the PV panels are to be installed flat on the roof to minimise their height and visual impact. The design response to this recommendation is considered acceptable.</p> <p>DA Review</p> <p><i>18. Confirm number of additional significant trees retained in new scheme, 1:1 replacement of trees removed and size/species of replacements. Quantify existing and future canopy cover (based on number and species);</i></p> <p><u>Comment:</u> See comment to recommendations 14, 15 and 16.</p> <p><i>19. Reduce, lower, adjust, articulate the basement to allow the retention of more of the existing trees and reduce the impact on the western site (future and existing dwellings);</i></p> <p><u>Comment:</u> The basement setbacks have been increased as discussed above, however the retention of additional existing trees within the site cannot be facilitated without unreasonably restricting the development potential. Council's Landscape Officer is satisfied that the amended proposal ensures the retention of trees on the adjoining properties to the west and is supportive of the proposal overall. The design response to this recommendation is considered acceptable.</p> <p><i>20. Reconsider entry sequence and treatments in relation to the driveway ramp and bin store particularly for the northern building;</i></p> <p><u>Comment:</u> See comment to recommendations 12 and 13.</p> <p><i>21. Re-design to allow the incorporation of significantly more accessible communal open space with appropriate resident amenity. May not meet but should go close to the 25% required under the ADG;</i></p>

Internal Referral Body	Comments
	<p><u>Comment:</u> The amended proposal includes a minor increase to the communal open space area provided but does not meet the 25% requirement. As discussed in the ADG assessment in this report, the site is in close proximity to the future town centre and will have suitable access to recreational opportunities and social interaction. The design response to this recommendation is considered acceptable.</p> <p><i>22. Engage with the landscape architect on the site planning and design to develop a more integrated solution that 'fits' within the site. Existing forms, retention of trees and quality of future spaces and character;</i></p> <p><u>Comment:</u> The proposal includes a significant proportion of deep soil and on-slab landscaped areas to accommodate a variety of planting. The site layout and landscape scheme represents an appropriate response to the site that will achieve an appropriate built form and character outcome. The design response to this recommendation is considered acceptable.</p> <p>Amenity PLM Review</p> <p><i>23. Test built form site layouts, including a more 'perimeter block' form, possibly with additional lifts to maximise natural ventilation and solar access;</i></p> <p><u>Comment:</u> As noted by the applicant, the proposed site layout is generally consistent with that depicted in the Master Plan for the Frenchs Forest Town Centre at WDCP G9(1) Figure 2 (Figure 4 in this report), that being 2 separate built forms separated by a break fronting Bluegum Crescent. The design response to this recommendation is considered acceptable.</p> <p><i>24. Minimise the effects of noise and pollution on living areas through apartment orientation and screening; aim to minimise the number of units with single southern aspect that also open to the busy road;</i></p> <p><u>Comment:</u> The proposal includes only 3 of the 44 apartments (7%) with a single aspect to Frenchs Forest Road West. The design response to this recommendation is considered acceptable.</p>

Internal Referral Body	Comments
	<p>DA Review</p> <p><i>25. Adjust planning to rationally and clearly allow natural light access to the lift lobby on each level;</i></p> <p><u>Comment:</u> This recommendation has not been taken up. The location of the circulation core of each building seeks to maximise the amenity and outlook of the apartments. The circulation spaces on each level have a window except for Level 4 of Building B; none of the corridors have been provided with natural ventilation. Whilst this would be desirable and a positive addition, it is not enforceable through any legislation and, given the size of the corridors, it is unlikely that occupants would spend any substantial duration in the corridor before entering an apartment or exiting the building.</p> <p><i>26. Provide a more generous common area and associated facilities;</i></p> <p><u>Comment:</u> See comment to recommendation 21.</p> <p><i>27. The outlook from units B102, 202, 302 into the back of Building A is poor- consider removing studies or having deep set balconies project forward to improve outlook;</i></p> <p><u>Comment:</u> This recommendation has not been taken up. The 10.2m-11.4m separation distance between the two buildings and the lesser width and height of Building A will enable a reasonable outlook from apartments B102, B202 and B302 past/over Building A. The design response to this recommendation is considered acceptable.</p> <p>Façade treatment/Aesthetics PLM Review</p> <p><i>28. Test vertical and horizontal façade compositions to reduce the perceived length and height of built forms;</i></p> <p><u>Comment:</u> The proposal includes vertical and horizontal articulation elements in conjunction with varied materials and finishes to reduce the perceived length of the building facades. The submitted proposal also includes an increased upper-level setback to Building B in accordance with the WDCP controls and has since been amended to increase the western setback of this level. The design response to this recommendation is considered acceptable</p> <p><i>29. Consider materials that are durable and age gracefully with little maintenance;</i></p> <p><i>30. Consider materials and colours that relate well to the landscape setting. Avoid large areas of colours that are excessively prominent within the landscape setting;</i></p>

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Internal Referral Body	Comments
	<p><u>Comment:</u> The submitted proposal incorporates a suitable low-maintenance material palette that is compatible with the landscape setting and desired future character. The DSAP noted that the material selection proposed at DA-stage was acceptable. The design response to this recommendation is considered acceptable</p> <p>Sustainability PLM Review</p> <p><i>31. Rainwater reuse, connected to irrigation as well as some of the apartments for toilet flushing or laundries or both;</i></p> <p><u>Comment:</u> The proposal includes connections for rainwater re-use for irrigation of common landscaped areas and the car wash bay.</p> <p><i>32. Solar panels should be included to as much of the roof top as possible;</i></p> <p><u>Comment:</u> The proposed PV array covers the majority of the roof areas.</p> <p><i>33. EV charging – make sure there is capacity for all dwellings for future charging;</i></p> <p><u>Comment:</u> The proposal complies with the WDCP requirements regarding EV charging points and the applicant advises that provision has been made for future connection of additional EV charging devices. However, there is no statutory requirement for EV charging infrastructure to be provided for all dwellings.</p> <p><i>34. Allow for bi-directional (2-way) charging of EV battery for powering the building;</i></p> <p><u>Comment:</u> The applicant advises that this recommendation will be explored at Construction Certificate stage.</p> <p><i>35. Heat island – look at a green roof under solar panels to reduce heat island effect and to improve efficiency of the panels;</i></p> <p><u>Comment:</u> See comment to recommendation 17.</p> <p><i>36. Passive design – the extent of glazing on the northeast corner on Frenchs Forest Road will result in those apartments being very cold in winter. Reconsider the amount of glazing on this corner;</i></p> <p><u>Comment:</u> The applicant advises that the glazing at this corner has been adjusted since the PLM scheme and that the design priority for these apartments is to maximise outlook and natural light access.</p>

Internal Referral Body	Comments
	<p>37. All services should be electric – gas for cooking, hot water and heating should be avoided;</p> <p>38. Heat pump systems for apartments or other ways of providing electric hot water should be considered;</p> <p>39. The storage of hot water can be considered a de-facto battery if heated by PVs during the day; and</p> <p><u>Comment:</u> These recommendations have not been taken up. The applicant advises that the BASIX Certificate has been updated to include electric induction cooktops and efficient reverse cycle air conditioning systems. However, the amended BASIX Certificate does not appear to reflect this advice. The applicant also advises that the use of instantaneous electric hot water and/or evacuated tube solar gas boosted hot water will be considered at Construction Certificate stage.</p> <p>40. The Department of Planning advises that dwellings with electric heat pump hot water systems, efficient reverse cycle air conditioners and induction cooktops can achieve the higher BASIX standard. Accordingly, the Panel recommends that to contribute to design excellence in sustainability, these appliances and fittings be utilised as a sustainability commitment to avoid the use of high emission energy sources such as gas.</p> <p><u>Comment:</u></p> <p>See comment to recommendations 37-39.</p> <p>The provisions of the WDCP and the sustainability-related recommendations made by the DSAP exceed the requirements of SEPP BASIX. However, cls. 8 and 9 of the SEPP make clear that the requirements of BASIX prevail in the event of an inconsistency. The proposal complies with the applicable BASIX requirements and the incorporation of recommendations 31-40 is at the applicant's discretion. As noted above, the applicant has advised that several of these recommendations will be considered through the design development stage.</p> <p><u>Conclusion</u></p> <p>The comments provided by the DSAP were based on the original design of the proposal when the DA was lodged, which has since been amended to respond directly to the majority of the recommendations. The amendments made improve the development's overall level of compliance and reduce impacts to the surrounding properties and public domain. The building is assessed as exhibiting a high level of design and amenity for future residents. Whilst the design and amenity of development could almost always be improved, the level provided by the revised proposal achieves that which is consistent with the provisions of the WLEP 2022, WDCP 2011, SEPP 65/ADG and SEPP BASIX, as detailed in this report.</p>

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>SUPPORTED WITH CONDITIONS</p> <p>The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Landscape Officer	<p>SUPPORTED WITH CONDITIONS</p> <p>The proposal is supported with regard to landscape issues.</p> <p><u>Additional Information Comment 20/10/23:</u> The amended reports and plans are noted.</p> <p>As outlined in the Arboricultural Impact Assessment (AIA), the proposal (if approved) requires the removal of the following exempt trees; 9, 10, 12, 13, 14, 15, 17, 18, 19, 21, 24, 25, 26, 28, 29, 30, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 49, 51, 53, 55, 56, 57, 58, 60, 61, 62, 64, 65, 66, and 67. Additionally, the exotic prescribed trees 1, 27, 31, 47, 48, 50 and 68, plus the native prescribed trees 11, 16, 20, 22, 23, 32, 40, 52, 54, 59 and 63, require removal. Exempt trees can be managed or removed at the discretion of the applicant without consent. The landscape proposal includes 35 native replacement trees (mid-storey and canopy) which sufficiently offsets the proposed canopy loss. All neighbouring trees along the western boundary must be protected during works as recommended in the AIA, subject to the imposed conditions. A Project Arborist shall be engaged to supervise all work in the tree protection zone of these neighbouring trees.</p> <p>The landscape planting proposal is generally supported and all proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent. All on slab landscaping shall meet the minimum soil depth requirements outlined in the ADG.</p> <p><u>Original Comment:</u> The Arboricultural Impact Assessment (AIA) identified 68 trees of which 43 trees are exempt (trees 9, 10, 12-15, 17-19, 21, 24-26, 28-30, 33-39, 41-46, 49, 51, 53, 55-58, 60-62, and 64-67), and as such do not require consent for removal. The landscape proposal is generally supported with 46% landscaped area, 30% deep soil and significant native tree replacement planting.</p>

	<p>However, the following concerns are raised,</p> <ul style="list-style-type: none"> • Tree removal/retention; <ul style="list-style-type: none"> ◦ Significant impact is proposed to neighbouring trees 5, 7, and 8 and the AIA states these trees should be considered for removal, whereas impact to neighbouring trees is not permissible. Furthermore, the AIA states the following regarding trees 5, 7, and 8, <ul style="list-style-type: none"> ▪ <i>"Based on civil SW design T5 will likely be detrimentally impact by excavation within the SRZ. Demonstrating that T7 & 8 will remain viable is also difficult where the trees could be managed in accordance with Australian Standard AS4970 Protection of Trees on Development Sites 2009, however, the extent of occupancy is unlikely to be sufficient to ensure trees remain viable",</i> ▪ <i>Specifically tree 5 "TPZ encroachment of Moderate (15-20%) TPZ impact & occupancy, at or near 15.4% by building / excavation footprint at or near 5.4m from tree. Additional significant excavation impact by SW service line Pits B-1 to B-2 & D-1 with tree located directly on top of existing SW service. SW excavation impact indicates high level of structural root disturbance within 1.2 – 1.4m of tree with over excavation for pit installation likely. SW service location would likely require tree removal or redesign to accommodate tree [SW Plan C101-3.]",</i> ▪ <i>Specifically tree 7 "TPZ encroachment of Moderate to High (20-25%) TPZ impact & occupancy, at or near 21% by building / excavation footprint at or near 5.6m from tree. Extent of occupancy likely to affect tree vitality with sudden exposure by loss of adjacent trees and protection factors indicating exposure may</i>
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Internal Referral Body	Comments
	<p><i>likely become problematic to tree structure, primarily due to trees suppressed and one-sided canopy biomass to the W. Tree removal could be considered, or tree managed in accordance with AS4970 – 2009 Protection of Trees on Development Sites however, the extent of occupancy is unlikely to be sufficient to ensure the tree will remain viable",</i></p> <ul style="list-style-type: none"> ▪ <i>Specifically tree 8 "TPZ encroachment of Moderate (15-20%) TPZ impact & occupancy, at or near 18.7% by corner building / excavation footprint at or near 5.2m from tree. Visual observations note very high surface root activity within the site indicating impacts on tree vitality are likely to be greater. Tree may also be affected by over exposure by loss of adjacent trees and protection factors where exposure may become problematic to tree structure. Additional SW service line impact may also contribute to disturbances where extent of works and TPZ occupancy is considered a Major encroachment & impact. Tree removal could be considered, or tree managed in accordance with AS4970 – 2009 Protection of Trees on Development Sites however, the extent of occupancy is unlikely to be sufficient to ensure the tree will remain viable",</i> ◦ <i>It is suggested that cut and fill information is provided to the Arborist, and should it be required tree root investigations undertaken. The design of the stormwater infrastructure and any building elements shall be completed in collaboration with the Arborist to allow a satisfactory outcome for the retention of trees 5, 7 and 8 (and all neighbouring trees), as determined by the Arborist. It is noted efforts have been made to reduce impact to neighbouring trees in the stormwater design; however, the location of pits B-1, B-2 and D-1 cause concern for the Arborist, and in particular the impact to tree 5 (high significance and high retention value),</i> ◦ <i>The Arborist also states "Tree 4 specific: Realign SW service Pit D-2 to be positioned at a minimum 5m setback from the tree with SW service line ideally positioned close to the building footprint to mitigate excavation impacts within the TPZ",</i>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • Planting scheme; <ul style="list-style-type: none"> ◦ The landscape treatments along the western and northern boundaries are generally supported; however, there is a lack of mid-storey planting which is required to create a buffer between the R2 zoned land to the north and to screen the exposed basement to the west. The mid-storey planting shall include large shrub/small tree species with a height range of 4-7 metres, which will provide a continuous buffer once the canopy trees mature (suggested spacing of 4-5 metres depending on species selected), • Proposed boundary retaining walls; <ul style="list-style-type: none"> ◦ There are significant retaining walls proposed at the south-eastern and north-eastern corner of the site, as shown on drawing DA_C101. The south-eastern corner retaining walls range from 1.4-1.52 metres high, and the north-eastern corner retaining walls range from 1.15-2.17 metres high. Is there a requirement for balustrade/fence in these locations to mitigate any fall risk? How will the road reserve be impacted by the extent of excavations required in these areas (this matter is deferred to Road Reserve referral team for comment)? Can the retaining walls be offset 1 metre from the boundary to allow for a planted buffer on the street level, between the boundary and the proposed walls, ◦ Shrub planting shall be included along the low side of the walls capable of attaining a mature height above the top of wall levels to ensure visibility from the streetscape (as shown at the north-eastern corner on landscape sheet LP-05).

NECC (Development Engineering)	<p>SUPPORTED WITH CONDITIONS</p> <p><u>Engineering Comments 9.11.23</u> Revised amendments submitted. Conditions provided.</p> <p><u>Engineering Comments 26.10.23</u> The following amendments are required:</p> <p>Stormwater Plans by Henry & Hymas Job Number: 22L17_DA A. Drawing Number C101</p> <p>(i) The easement pipe connected to the edge of the proposed building is not supported. The design should be lowered as there is sufficient grade to connect to the existing receiving pit in Councils easement. The pipe should be moved to the middle of the proposed easement.</p> <p>(ii) Easements are to be widened on all corners/ changes of direction as per Figure 2 of Section 6.1.2.1 of the <i>Water Management for Development Policy Version 2 dated February 2021</i>.</p> <p>(iii) Clearly label the pipe size from Pit B-6 to Pit B-1 as 450 mm RCP.</p> <p>(iv) Provide clear instructions for Pits B-7 & B-6 as per Pit B-8. Provide 1.8m lintels.</p> <p>(v) Pit B-8. Add "sag" to instruction.</p> <p>(vi) On another sheet provide longitudinal section from Pit D-2 to B-1.</p> <p>(vii) Provide drafting quality check as considerable amount of information is not legible.</p> <p>(viii) On this sheet or another confirm the catchment that is connected to the rainwater tank.</p> <p>(ix) On this sheet or another clearly show an emergency overland flow path from OSD tank in the event of complete outlet blockage.</p> <p>(x) On another sheet provide longitudinal profile and sections through overland flow channel.</p>
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Internal Referral Body	Comments
	<p>B. Drawing Number C202</p> <p>(i) Provide drafting quality check as considerable amount of information is not legible.</p> <p>(ii) OSD/SF/RWT PLAN. Show inlet pipes in to rainwater tank.</p> <p>(iii) Section 2. Provide minimum 1% slope on floor. Show invert levels.</p> <p>C. Drawing Number C210</p> <p>(i) Provide drafting quality check as considerable amount of information is not legible.</p> <p>(ii) Increase text size. Remove crossing lines from text by providing leader indents as required.</p> <p>(iii) Amend design as per previous advice to lower proposed pipe.</p> <p>(iv) On this sheet or another, provide longitudinal sections for lines Ex-3 to B-7 and D-2 to B-1.</p> <p>(v) On drainage longitudinal sections show 1% and 5% AEP HGL levels.</p> <p>D. On Drawing Set.</p> <p>(i) Provide plan and sections through Pit B-5.</p> <p>(ii) Provide plan and sections through Pit B-1. Design Pit B-1 to limit losses caused by sharp change in direction.</p> <p>E.</p> <p>(i) Provide DRAINS model of proposed drainage system. Use IL-CL model with ARR 2019 methodology. Assume 0.2 blockage factor for on grade pits and 0.5 blockage factor for sag pits. Include on-site detention system in model.</p> <p>(ii) Provide DRAINS model of proposed drainage system. Use IL-CL model with ARR 2019 methodology. Assume 75% blockage in 375 and 450mm pipes. Assume 0.2 blockage factor for on grade pits and 0.5 blockage factor for sag pits. Include on-site detention system in model.</p> <p>(iii) Provide HEC-RAS 1D model through proposed overland flow channel showing sections at maximum 5m spacing and through critical locations for the 1% and 5% AEP events using peak flows derived in part E(ii). Provide minimum 500mm freeboard from top of 1% AEP flows to habitable level.</p> <p>Groundwater Impact Assessment</p> <p>Please refer to proposed consent condition shown below:</p>

	<p><i>The basement area is to be permanently tanked. The Applicant is to submit structural details of the tanking, prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Office of Environment and Heritage. The bore license must be obtained prior to commencement of dewatering works. All requirements of the Water NSW are to be complied with and a copy of the approval must be submitted to the Certifier.</i></p> <p><i>Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.</i></p> <p><i>Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements.</i></p> <p>Engineering Comments 26.10.23</p> <p>The proposed design for the realignment of Council's easement pipe is not supported for the following reasons.</p> <ol style="list-style-type: none"> 1. Pipe Section B-2 to B-1 shows 0.5% pipe grade. The minimum accepted pipe grade is 1.0%. 2. The sharp change in pipe alignment at pit B1 is not supported. Amended design should show two- 45 degree changes as per Pit B-2 to B-3. 3. The change in pipe size from the proposed 675 RCP to an existing 375 RCP is excessive. It is noted that the applicant was asked to use blockage factors which may have resulted in the large proposed pipe sizes. Amended design need will require that the reduction in pipe size be limited to 150 mm. This will need to be complemented with DRAINS modelling which shows that the capacity of all pipes is maintained or increases downstream to Pit SPP04702. Amended design should show the extension of proposed drainage works to Pit SPP04702 with a 525 RCP from Pit B1 or provide alternate design which maintains proposed level of protection from flooding. 4. It is unclear what is the intent of the the overland flow channel from the OSD basin in the case of full blockage, which is shown by green arrows. <p>It is noted that Pit B2 is a sag pit and is sealed which appears to create a trapped low point. Has the option of channeling overland flows from the OSD tank to the Emergency Overland Flow Path been considered?.</p> <ol style="list-style-type: none"> 5. Maximum grate level of OSD chamber is to be amended to a minimum of 300 mm below habitable floor levels. The proposed design shows Pit C-5 as being over half a metre above the habitable floor level for Building A and over a metre above the habitable floor level for Building B.
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Internal Referral Body	Comments
	<p>6. The water level in the "Emergency Overland Flow Path Longitudinal Section" is to be a minimum of 300 mm below habitable floor levels.</p> <p>Engineering Comments 9.11.2023 Refer to conditions below.</p>
NECC (Flooding)	<p>SUPPORTED WITHOUT CONDITIONS</p> <p>There are no flood related objections subject to the assessment of overland flow path by the development engineers.</p>
NECC (Water Management)	<p>SUPPORTED WITH CONDITIONS</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Relevant LEP and DCP clauses; and • Northern Beaches Water Management for Development Policy <p>Warringah Development Control Plan, special area controls G9 contain "maintain or enhance" water quality objectives.</p> <p>Note the following principles of the Northern Beaches Council WSUD and MUSIC modelling Guidelines:</p> <ul style="list-style-type: none"> i) integrating vegetated stormwater treatment into the landscape, so as to provide increased biodiversity, amenity and micro-climate benefits which can reduce the heat island effect, and; vii) providing green infrastructure and green links to improve habitat corridors. <p>Geotechnical investigation encountered groundwater and dewatering will likely be required. The applicant must contact catchment@northernbeaches.nsw.gov.au for advice on Council's groundwater dewatering permit prior to excavating.</p> <p>Approvals must be obtained from NSW Department of Planning and Environment – Water to undertake construction if large quantities of groundwater are to be removed.</p>

Strategic and Place Planning	<p>SUPPORTED WITHOUT CONDITIONS</p> <p>Discussion of Reasons for Referral</p> <p>This application has been referred as the subject site is subject to clause 35A(1) of the Environmental Planning & Assessment Regulations 2021 (the Regulations).</p> <p>The site is zoned R3 Medium Density Residential under Warringah Local Environmental Plan 2011 (WLEP 2011). No. 142 Frenchs Forest Road West and No. 1 Bluegum Crescent also benefit from Schedule 1 - Additional Permitted Uses, Area 24.</p> <p>Consideration of Application</p> <p><u>ADDITIONAL INFO RECEIVED – 25/05/2023</u></p> <p><u>The Regulations</u></p> <p>The additional information dated 24/05/2023 provides an assessment against clause 35A(1) of the Environmental Planning & Assessment Regulations 2021. The additional information has demonstrated an assessment of the consistency of the proposed development with the Frenchs Forest 2041 Place Strategy (see below).</p> <p><u>Strategic Planning Intent</u></p> <p>The overall intent of the Frenchs Forest 2041 Place Strategy in relation to the proposed development is the delivery of high quality medium rise apartment buildings which imbue an urban residential character. The proposed development satisfies this intent by providing for two residential flat buildings comprising 44 apartments (7 x 1-bed, 30 x 2-bed, 7 x 3-bed). Of these, 5 will be adaptable and 7 will be dedicated as affordable housing.</p> <p>Objective 4 of the Place Strategy identifies an objective to provide a range of housing types and densities to improve housing choice and create opportunities for key workers to live close to the hospital. The proposal is considered to meet this objective by providing 44 apartments (7 of these will be affordable housing).</p> <p>The Place Strategy does not envisage vehicular access off Frenchs Forest Road West, to ensure that this contributes to the vision for a high quality streetscape along Frenchs Forest Road West. Vehicular access is proposed off Bluegum Crescent, which meets this objective.</p>
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	<p>Strategic Planning notes that further improvement can be accommodated in a number of other areas which will be addressed by other Council business units e.g. design excellence, affordable housing requirements, local infrastructure contributions, traffic, active travel requirements etc.</p> <p>Overall, Strategic Planning is satisfied that the proposed development complies with the intended outcome and clause 35A(1) of the Regulations. The proposal is considered acceptable in terms of Council's Strategic Planning subject to concurrence from Strategic and Place Planning Team 2 (Affordable housing contributions) and Strategic and Place Planning Team 3 (Development contributions).</p> <p><u>PREVIOUS COMMENTS – 11/05/2023</u></p> <p>The Application is for the demolition of existing buildings and structures, amalgamation of lots, the construction of two residential flat buildings providing a total of 44 apartments (7 x 1-bed, 30 x 2-bed, 7 x 3-bed). Of these, 5 will be adaptable and 7 will be dedicated as affordable housing. Basement parking with 57 spaces (46 resident, 5 visitor, 6 car share) is proposed.</p> <p>Matters for consideration are discussed below.</p> <p><u>The Regulations</u></p> <p>A response to clause 35A(1) of the Regulations is required. Clause 35A states:</p> <p>35A Additional requirements for development applications in Frenchs Forest Precinct</p> <p>(1) A person must not apply to a consent authority for development consent to carry out development on land in the Frenchs Forest Precinct unless the application is accompanied by an assessment of the consistency of the proposed development with the Frenchs Forest 2041 Place Strategy.</p> <p>The documentation submitted (including the Statement of Environmental Effects) has not demonstrated an assessment of the consistency of the proposed development with the Frenchs Forest 2041 Place Strategy.</p>
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Internal Referral Body	Comments
	<p><u>Land Use</u> No issues are raised with the proposed land uses and proposal to not include additional permitted land uses, which the site benefits from.</p> <p><u>Undergrounding of powerlines</u> The front setback to Frenchs Forest Road West proposes communal landscaping and no fence. This is an acceptable design outcome to respond to the future undergrounding of the overhead powerlines, which may require earthworks outside of the subject site to remove the poles and facilitate minor footpath realignment.</p> <p>In conclusion, the application cannot be supported in its current form unless a response is provided to clause 35A(1) of the Environmental Planning and Assessment Regulation 2021 either in the Statement of Environmental Effects or as a separate supporting document.</p>

Strategic and Place Planning (Development Contributions)	<p>SUPPORTED WITH CONDITIONS</p> <p>On 24 April 2023, Strategic and Place Planning provided a referral response for this application. At the time, the total contribution payable was not calculated due to the uncertainty in timing of adoption of an IPART-reviewed contributions plan and the total quantum of dwellings proposed.</p> <p>An updated response is provided based on additional information received on 28 September 2023. The contribution calculation and conditions will require further amendment if there are changes to the quantum of approved dwellings or an IPART-reviewed contributions plan comes into effect.</p> <p>Officers Comments</p> <p>DA2023/0285 seeks consent for the demolition of existing structures, amalgamation of lots and the construction of two multi-storey residential flat buildings over two levels of basement parking.</p> <p>The amended plans, prepared by Kann Finch Group and dated September 2023, show that the development will comprise a total of 44 apartments being:</p> <ul style="list-style-type: none"> • 7 x 1-bed dwellings • 31 x 2-bed dwellings • 6 x 3-bed+ dwellings <p>The subject site is 142 Frenchs Forest Road West and 1, 3 and 5 Bluegum Crescent, Frenchs Forest. The site is zoned R3 Medium Density Residential under the Warringah LEP 2011.</p> <p>The subject site contains four existing dwellings, one on each allotment. The existing dwellings all contain 3-beds+.</p> <p>The subject site is within the Frenchs Forest Planned Precinct. The Department of Planning and Environment prepared the Frenchs Forest 2041 Place Strategy on 17 December 2021 and the land was rezoned on 1 June 2022.</p> <p>The Frenchs Forest Town Centre Contributions Plan 2022 (the Contributions Plan) came into force on 1 June 2022 and funds the delivery of local infrastructure required to support development under the Frenchs Forest 2041 Place Strategy. The Contributions Plan levies both residential and non-residential development that will result in additional population. The Contributions Plan applies to the subject site and to the development proposed under DA2023/0285.</p>
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	<p>A contribution will be calculated in accordance with Table 2 in the Contributions Plan and the indexed rates published on Council's website. A credit will be provided for the four existing 3-bed dwellings on the subject site. If DA2023/0285 is approved as currently proposed, the required contribution will be based on the following additional residential development:</p> <ul style="list-style-type: none"> • 7 x 1-bed dwellings • 31 x 2-bed dwellings • 2 x 3-bed+ dwellings (includes a credit for the four existing dwellings) <p>The residential rates in the Contributions Plan are subject to the Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012 until such time as an IPART-reviewed contributions plan is in force. This Direction caps residential contributions at \$20,000 per dwelling or allotment. If the application remains undetermined when an IPART-reviewed contributions plan comes into effect, a referral must be sent to SPP3 to recalculate the contribution and update the condition of consent.</p> <p><u>Special Infrastructure Contribution</u></p> <p>The Frenchs Forest Special Infrastructure Contribution (SIC) came into effect on 7 December 2021. The SIC is managed by the NSW Government and levies monetary contributions to fund improvements to identified regional infrastructure.</p> <p>The Housing and Productivity (HAP) contribution came into force on 1 October 2023 and is implemented by the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.</p> <p>The HAP repeals the SIC, however Schedule 5 contains savings and transitional provisions for applications submitted prior to 1 October 2023. DA2023/0285 was submitted prior to 1 October 2023, therefore the SIC applies to this application. The SIC condition must be imposed by the assessing officer.</p> <p>RECOMMENDATION</p> <p>A. If approval of the DA is being recommended by the Assessing Officer, the following condition must be imposed:</p>
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Internal Referral Body	Comments
	<p>Special Infrastructure Contributions Prior to issue of any Construction Certificate the applicant must pay a total development contribution to Council of \$800,000 in accordance with the Frenchs Forest Town Centre Contributions Plan 2022. This contribution is calculated based on 40 additional dwellings (7x1-bed, 31x2-bed and 2x3-bed). A credit for the four existing dwellings has been provided. The monetary contribution will be adjusted at the time of payment in accordance with the provisions of the Frenchs Forest Town Centre Contributions Plan 2022. Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Principal Certifier. The Applicant may negotiate with Council for the direct provision of other facilities and services, and/or the dedication of land (other than land identified above) in lieu of the monetary contribution above (or any portion of that monetary contribution) through a Planning Agreement between Council and the Applicant in accordance with the Frenchs Forest Town Centre Contributions Plan 2022 and Council's Planning Agreement Policy (as amended). The Planning Agreement between the Applicant and Council must be finalised, formally signed and in place prior to the payment of the monetary contribution. 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.</p> <p>Reason: To provide for contributions in accordance with the Contribution Plan that enables the provision of local infrastructure and services commensurate with the increased demand resulting from development in the Frenchs Forest Place.</p> <p>B. The Assessing Officer must impose the standard condition requiring payment of the SIC.</p>

Internal Referral Body	Comments
Strategic & Place Planning (Affordable Housing Contributions)	<p>SUPPORTED WITH CONDITIONS</p> <p>Introduction</p> <p>On 10 May 2023, Strategic and Place Planning 2 provided a referral response for this application. At the time, the application was required to be re-submitted identifying the total 10% of GFA to be provided as affordable housing, inclusive of the remainder of the required GFA (after dedication of units for affordable housing) to be paid via a monetary contribution in accordance with the Scheme and WLEP 2011.</p> <p>An updated response is provided based on additional information received on 31 October 2023. The contribution calculation and conditions will require further amendment if there are changes to the quantum of total GFA and/or changes in the total GFA of dwellings to be dedicated.</p> <p>Officers Comments</p> <p>DA2023/0285 seeks consent for the demolition of existing structures, amalgamation of lots and the construction of two multi-storey residential flat buildings over two levels of basement parking. The amended plans, prepared by Kann Finch Group and dated September 2023, show that the development will comprise a total of 44 apartments being:</p> <ul style="list-style-type: none"> • 7 x 1-bed dwellings • 31 x 2-bed dwellings • 6 x 3-bed+ dwellings <p>The subject site is 142 Frenchs Forest Road West and 1, 3 and 5 Bluegum Crescent, Frenchs Forest. The site is zoned R3 Medium Density Residential under the Warringah LEP 2011. The subject site contains four existing dwellings, one on each allotment. The existing dwellings all contain 3-beds+.</p> <p>The subject site is within the Frenchs Forest Planned Precinct. The Department of Planning and Environment prepared the Frenchs Forest 2041 Place Strategy on 17 December 2021 and the land was rezoned on 1 June 2022.</p> <p>Affordable Housing Contributions Scheme</p> <p>The application is on land identified as being within the Northern Beaches Council Affordable Housing Contributions Scheme (The</p>

	<p>Scheme), French's Forest Planned Precinct "Area A". The following affordable housing contribution rates apply to development applications for residential floorspace within this area:</p> <p>Where the contribution is provided as a dedication of dwellings:</p> <ul style="list-style-type: none"> • Within area "A" the dedication in favour of the consent authority, free of cost, one or more complete dwellings with a gross floor area equivalent to 10% of the accountable total floor space. <p>Where the contribution is provided as an equivalent monetary contribution:</p> <ul style="list-style-type: none"> • \$11,000 per square metre* <p>* (as described in the Scheme dated September 2021 with the contribution indexed on an annual basis on 1 March every year in accordance with clause 3.2.1 of the Scheme with the current indexed figure being \$13,069.89/sqm).</p> <p>The Scheme identifies that generally the contribution is to be provided via dedication of dwellings, or if the percentage of accountable total floor space (the gross floor area of the residential component of the development) results in an area which equates to less than 50sqms, or where Council otherwise considers it appropriate to achieve a better affordable housing outcome, a monetary contribution equivalent to the market value of the dwellings that would otherwise be required will be sought as condition of development consent. In some cases, a contribution may also comprise a dedication and monetary contribution.</p> <p>The Scheme also identifies a principle that Affordable housing must consist of dwellings constructed to a standard that, in the opinion of the consent authority, is consistent with the same type of dwellings within the development to which the development application relates, especially in terms of internal fittings and finishes, solar access and privacy.</p> <p>Warringah Local Environmental Plan 2011</p> <p>The application is on land identified within the WLEP 2011 affordable housing contributions scheme map in the Frenchs Forest Town Centre requiring not less than 10% of the gross floor area of the building to be used for affordable housing subject to the requirements of clause 6.11 of Warringah LEP 2011.</p> <p>Clause 6.11 of Warringah LEP 2011 applies to development in an affordable housing contribution area that involves—</p> <p><i>(a) the erection of a new building with a gross floor area of more than 200 square metres, or</i></p> <p><i>(b) alterations to an existing building that will result in the creation of more than 200 square metres of gross floor area intended to be used for residential purposes, or</i></p>
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	<p><i>(c) alterations to an existing building and the consequent creation, whether for the same or a different purpose, of more than 100 square metres of gross floor area.</i></p> <p>The application contains the erection of a new building with a gross floor area of more than 200sqms and so clause 6.11 applies.</p> <p>Clause 6.11 also stipulates a consent authority may, when granting development consent to development to which this clause applies, impose a condition requiring a contribution equivalent to the applicable affordable housing levy contribution for the development.</p> <p>A condition imposed under this clause must provide for the affordable housing levy contribution to be satisfied:</p> <p><i>(a) by dedication in favour of the Council of land comprising—</i></p> <p><i>(i) 1 or more dwellings, each having a gross floor area of not less than 50 square metres, with any remainder paid as a monetary contribution to the Council, or</i></p> <p><i>(ii) other land approved by the Council in accordance with the Affordable Housing Contributions Scheme, with any remainder paid as a monetary contribution to the Council, or</i></p> <p><i>(b) if the Council agrees, by monetary contribution paid to the Council.</i></p> <p>The application is therefore required to identify the dwellings to be dedicated to Council for the purpose of affordable housing and provide a monetary contribution for the remainder of the required GFA in accordance with the Scheme and WLEP 2011.</p> <p>Proposed Affordable Housing Contribution</p> <p>The application is for 4,332m² of residential gross floor area, 10% of which (433.2m²) is to be dedicated as affordable housing.</p> <p>The application proposes the dedication of seven x 1-bedroom apartments, being:</p> <table> <tr> <th>Apartment</th><th>Size (m²)</th></tr> <tr> <td>A102</td><td>53</td></tr> <tr> <td>A103</td><td>52</td></tr> <tr> <td>A202</td><td>53*</td></tr> <tr> <td>A203</td><td>52*</td></tr> <tr> <td>B107</td><td>62</td></tr> <tr> <td>B207</td><td>62*</td></tr> <tr> <td>B307</td><td>62</td></tr> <tr> <td>TOTAL</td><td>396</td></tr> </table> <p>*assumed totals as GFAs for these units are not specifically identified on the floor plans</p>	Apartment	Size (m ²)	A102	53	A103	52	A202	53*	A203	52*	B107	62	B207	62*	B307	62	TOTAL	396
Apartment	Size (m ²)																		
A102	53																		
A103	52																		
A202	53*																		
A203	52*																		
B107	62																		
B207	62*																		
B307	62																		
TOTAL	396																		

Internal Referral Body	Comments
	<p>The application proposes the dedication of 396m² of GFA for the purposes of affordable housing. Addition information provided on 31 October 2023, identifies the remainder of the 37.2m² of GFA to be paid via a monetary contribution in accordance with the Scheme and WLEP 2011.</p> <p>RECOMMENDATION A. If approval of the DA is being recommended by the Assessing Officer, conditions have been provided.</p>
Traffic Engineer	<p>SUPPORTED WITH CONDITIONS <u>Comments on Revised Plans - 5/10/2023</u></p> <p>The amended plans have reallocated one of the residential parking spaces as a car wash bay, resulting in a total of 45 residential spaces (compliant with DCP maximum), 5 visitor spaces, 6 car share spaces and 1 car wash bay and 22 motorcycle bays. These parking numbers are acceptable.</p> <p>The applicant has also provided SIDRA modelling that confirms that anticipated traffic generation should not result in queuing back from Frenchs Forest Road West beyond the location of the proposed driveway. The proposed driveway location is therefore acceptable</p> <p>Finally, the amended plans also make allowance for the construction of a parking indent to facilitate kerbside waste collection without impeding northbound through on Bluegum Crescent.</p> <p>Given the above there are no outstanding traffic engineering issues preventing approval of the development application subject to conditions</p> <p><u>Original Comments - 13/7/2023</u></p> <p>Parking</p> <p>DCP requirements for parking are assessed in terms of the Frenchs Forest Town Centre rates as follows: 1 bedroom apartments 0.6 space per dwelling = 7x 0.6 (4.2) 2 bedroom apartments 1 space per dwelling = 30x1 (30) 3 bedroom apartments 1.5 spaces per dwelling = 7x1.5 (10.5)</p> <p>Total residential parking required = 44.7 round up to 45. The applicant proposes to provide 46 spaces which is one in excess of the maximum allowable under the DCP</p>

	<p>Visitor parking 0.1 space per dwelling = 0.1×44 (4.4 round up to 5) . The applicant proposes to provide 5 spaces which is acceptable. One of the visitor bays will also double as a car wash bay which is acceptable however dedication of a residential parking space would be preferable (noting that the residential parking is currently one space in excess of DCP requirements).</p> <p>Car Share – 2 spaces per 15 dwellings = $2 \times 44/15$ (5.9 round up to 6). The applicant proposes to provide 6 spaces which is the minimum allowable</p> <p>Total parking required = 56 spaces. The applicant proposes to provide 57 spaces which is one in excess of requirements. As the residential parking requirement is a maximum the number of residential spaces shall be reduced by one from 46 to 45.</p> <p>Electric Vehicle spaces – the greater of 2% of total parking supply or 2 per development. The applicant proposes to provide 2 spaces (the minimum acceptable)</p> <p>Motorcycle parking – 0.5 spaces per dwelling ($44 \times 0.5 = 22$ spaces required). The applicant proposes to provide 22 spaces (the minimum acceptable)</p> <p>Bicycle parking – 2 spaces per dwelling and 0.25 spaces per dwelling for visitors ($44 \times 2 + 0.25 \times 44 = 88$ residential bicycle spaces and 11 visitor spaces required). The applicant proposes to provide 88 residential bike spaces and 11 visitor bike spaces, with have been shown on the plans and are acceptable.</p> <p>Accessible parking – 3% of the required quantum of parking must be for accessible use i.e 2 spaces. 7 accessible parking spaces have been provided (5 residential, 1 visitor and 1 car share). This exceeds requirements and is acceptable</p> <p>In terms of the quantum of parking the proposal is compliant subject to reallocation of one residential space as a car wash bay.</p>
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	<p>Parking Area and Vehicle Access Design</p> <p>The driveway serving the development is located off Bluegum Crescent which is consistent with the Frenchs Forest 2041 Place Strategy that does not envisage new vehicle crossings onto Frenchs Forest Road West. The driveway appears to be sited far enough into Bluegum Crescent that congestion/queueing issues should not eventuate as a result of intersection queuing interfering with movements to and from the driveway and SIDRA intersection analysis was requested to confirm that this was the case. The SIDRA analysis undertaken has however found 95th percentile queue lengths of less than one vehicle which does not seem realistic. The SIDRA analysis shall be reviewed and the .sip files provided to Council's traffic engineers for review.</p> <p>The vehicle access into the carpark and the internal ramp between basement 1 and basement 2 incorporates driveway segments graded at 25%. AS/NZS2890.1 clause 2.5.3 (b) permits driveways to be graded at up to 25% for driveways other than to domestic properties if the driveway/ramp and transition areas do not exceed 20m in length. The driveway ramp longsections demonstrate that the steepened sections are less than 20m in length and the grades are acceptable.</p> <p>The driveway and aisle widths are of dimensions that satisfy the minimum requirements of AS2890.1 and are sized appropriately to allow ingress and egress by a B85 vehicle. The driveway ramp is 5.5m in width at the boundary and throughout the ramp into the basement with parking aisles being at least 5.8m in width. This is compliant with AS2890.1 requirements and allows for passing of B85 & B99 vehicles at the driveway/road junction and on the circulation aisles.</p> <p>Loading & Servicing</p> <p>No offstreet facility for deliveries by small to medium trucks (removalist vans, grocery deliveries etc) has been provided and the 2.2m clearance into the basement carpark does not allow for offstreet loading and servicing as required by Part G9 clause 5.2.10.2 of the Warringah DCP. There is also no provision made for kerbside waste collection. The time taken to empty 44 bins will be well in significant and a parked garbage truck at kerbside could potentially block traffic flow in both directions noting that the No Parking restriction on the east side of Bluegum Crescent applies only between 8am and 4pm Mon-Fri and 8am-1pm on Saturdays. Ideally a kerb indent capable of accommodating a medium rigid vehicle coupled with a signposted Loading Zone should be provided to cater for waste collection as well as the loading needs generated by the development. This aspect of the development has not been reviewed in the applicant's traffic report and is required.</p>
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	<p>External Works</p> <p>To facilitate pedestrian access to and from the development and to public transport and services a 1.5m wide footpath will be required along the full Bluegum Cres frontage of the property linking with the existing footpath on Frenchs Forest Road. It is noted that a new footpath is shown on the DA plans design details will be required for Roads Act approval prior to construction. This will be conditioned.</p> <p>Summary</p> <p>The developer must amend the parking allocation to reallocate one of the residential parking spaces as a car wash bay. In addition the SIDRA modelling should be reviewed to ensure that an accurate reflection of the queuing in Bluegum Crescent is achieved with a copy of the revised SIDRA files provided to Council's traffic engineer for review. Further information addressing the absence of offstreet loading/servicing facilities is also required together with details to facilitate on-street loading/servicing if offstreet loading/servicing is not feasible.</p>
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Internal Referral Body	Comments
Waste Officer	<p>SUPPORTED WITH CONDITIONS</p> <p>Amended Plans (submitted 28.9.2023)</p> <p>Operational Waste Management Plan - Amended (submitted 8/6/2023)</p> <p>The amended Operational Waste Management Plan (OWMP) has addressed most of the issues raised by Council. The following issues will need further attention to resolve:</p> <p>1) Waste vehicle loading zone. The loading zone is proposed for the opposite side of the driveway to the bin holding bay. This will result in collection staff having to cross the driveway pulling bins in both directions and carrying bulky goods items. The loading zone needs to be adjacent to the bin holding bay/bulky goods storage area.</p> <p>2) Bulky Goods Presentation Area (street level). The bulky goods presentation area appears to be smaller than the required 14 sq metres. It is much smaller than the original proposal. The information provided in the OWMP is only a partial screen shot of plan drawing. It is difficult to accurately measure without knowing the scale. Please have the applicant provide a fully dimensioned drawing of the bulky goods and bin presentation area on an amended ground floor plan for assessment</p> <p>3) Bin Holding Bay (street level) As it is proposed to store bins in this area on a permanent basis the structure will need to be roofed with a minimum ceiling height of 2.1 metres, be fully vermin proof and fully screen the bins from view. It is preferred that any doors fitted to the structure are to be hinged/swinging doors. Sliding and concertina doors cause ongoing access and maintenance problems.</p> <p>Additional Issues: Recycling Cupboards Council requires the recycling cupboards to be immediately adjacent to the garbage chute opening. Only one location within the building meets this requirement - Building A Level 3 Seven locations are close by but not adjacent - Building A Levels 1 & 2, Building B Ground floor and Levels 1, 2, 3 & 4. Please relocate the cupboards adjacent to the chutes where possible. One location is <u>unacceptable</u> and will need to be changed - Building A Ground Floor</p> <p>The recommendations, roles and responsibilities described in the</p>

Internal Referral Body	Comments
	<p>OWMP are to be included in the Plan of Management for the building. This document will need to be submitted as part of the DA for assessment.</p> <p>Waste Management Assessment Unsupported. Waste Management Plan A Waste Management Plan must be submitted and must address ongoing bin management including storage, responsibility for bin rotation including transfer of bins between the carousel rooms, the recycling cupboards and the street level holding bay. The plan should also address how available recycling capacity will be maintained at all times to the building occupants. Note: The Waste Management Plan rev 1, February 2023 -(Trim 2023/185201) - does not contain this required information</p> <p>Waste Collection Location Waste will be collected from the kerbside on Bluegum Crescent. Council will wheel the bins from the storage area to the truck and return them to the storage area. An indented bay, or if this is not achievable, a waste vehicle specific loading zone, <u>sized for a 10.5 metre long heavy rigid vehicle plus 2m working space at the rear</u>, must be provided adjacent to the building, and shown on the plans.</p> <p>Bin Allocation and storage. Council will provide the following waste and recycling bins:</p> <ul style="list-style-type: none"> • 17 x 240 litre garbage bins – includes 2 additional bins to remain on the carousels • 13 x 240 litre paper recycle bins – includes 4 additional bins for rotation • 11 x 240 litre container recycle bins – includes 2 additional bins for rotation • 1 x 240 litre vegetation bin per 200sq m landscape area. <p>Bin Holding area for collection. The bin holding area needs to stand 44 x 240 litre bins for collection, separated by waste type as trucks for different waste types arrive at different times. This needs to be shown on the plans. The footprint for each 240 litre bin is 150mm x 600mm.</p> <p>The garbage/carousel rooms in the basement need to show adequate storage for empty waste containers. or if other storage is proposed this needs to be identified on the plans.</p>

Internal Referral Body	Comments
	<p>The bulky goods room is required to have a floor area of 13.2sqm.</p> <p><u>Access to Street Level Bin Holding Room</u></p> <p>a) Location of the street level bin holding area is suitable.</p> <p>b) Service access for Council waste collection staff must be via a pathway that is separate to the vehicular driveway.</p> <p>c) Service access pathway is to have a flat, smooth non-slip surface with a maximum gradient of 1 in 8 and contain no steps.</p> <p>d) Service pathway is to be a minimum of 1200mm wide.</p> <p>It is noted that the proposed bin holding bay meets the access requirements.</p> <p>Any doors fitted on the waste storage area, pathway and access must be:</p> <p>a) Able to be latched in an open position for servicing without obstructing access to, and manoeuvring of, bins</p> <p>b) Unobstructed by any locks and security devices. Any doors requiring to be secured must be fitted with a timer lock programmed to be unlocked from 6.00am to 6.00pm on the scheduled day of collection.</p> <p>c) Be a minimum 1200mm wide</p> <p>d) Openable in an outward direction only and away from the direction of travel between the bin storage room to the street.</p>
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>SUPPORTED WITH CONDITIONS</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 65 - Design Quality of Residential Apartment Development

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

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

- (a) the development consists of any of the following:
 - (i) the erection of a new building,
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
 - (iii) the conversion of an existing building, and
- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the erection of a five and six-storey residential flat building development comprising 44 self-contained dwellings.

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

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

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

Northern Beaches Council has an appointed Design and Sustainability Advisory Panel (DSAP). Refer to the DSAP referral comments section within this report.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

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

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

Comment:

The desired future character of the locality is set out by the planning controls contained within the Warringah LEP and DCP. It is noted that these controls have been developed in accordance with the *Frenchs Forest 2041 Place Strategy* and differ from those applicable to the adjoining low-density residential zone.

The Character Statement provides that *"The Frenchs Forest Road West Neighbourhood will provide a contextually appropriate interface to surrounding low density residential areas...characterised by High quality medium rise apartment buildings, up to 6 storeys to create a new urban residential character to the north of Frenchs Forest Road West."*

The proposed siting and design of the development respond and contribute to the surrounding context. The proposed boundary setbacks largely comply with the DCP controls and enable a positive landscape outcome for the site that offsets the removal of existing canopy trees. The built form steps with the topography of the site to ensure adequate building separation while achieving a balance between site-responsive design and the development potential anticipated by the controls.

The proposed setbacks also provide for an appropriate interface to the adjoining R2 zone through the largely compliant design response to the site specific setback and building envelope control prescribed by WDCP 5.2.3(3).

The proposed building height variations are supported for the reasons outlined in the Clause 4.6 assessment of this report and are not considered to preclude consistency with this Principle. The proposal is compatible with the density and character envisaged by the planning controls and is therefore consistent with Principle 1.

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

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

Comment:

The appropriate level of bulk and scale is dictated by what is permissible under the applicable planning controls. The proposal is compliant with the FSR control across both buildings, is largely setback-compliant and includes substantial perimeter deep soil landscaping. The proposed building height breaches are considered to be acceptable in extent and siting, as discussed in the Clause 4.6 variation

section of this report, and do not contribute to excessive bulk or scale that would detract from the desired future character of the locality.

The proposed articulation and treatment of the building facades respond appropriately to the land uses of the adjoining properties and the public domain. The proposed alignments, proportions and format of the development reflect the transition from the Frenchs Forest Road West interface to the adjacent R2 zone to the north.

The proposed development is of a scale, bulk and height that achieves the desired future character intended by the planning controls, and is therefore consistent with Principle 2.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment:

As there are no density-specific controls applicable to the site, the density of the site is dictated by the prescribed controls. The proposal complies with the FSR control across both buildings and responds adequately against the site-specific built form controls contained within WDCP 2011 - Section G9. The proposed building height variations are found to be acceptable in this circumstance, as assessed in the Clause 4.6 variation section of this report. Each of the proposed apartments within the development meet the required internal dimensions and are afforded a high level of internal amenity, while maintaining sufficient separation distances to adjoining properties. The density of the proposal is therefore found to be consistent with the development potential of the site.

The subject site is identified within the Frenchs Forest 2041 Place Strategy which is intended to deliver 2000 new dwellings, and also forms part of the Frenchs Forest Hospital Structure Plan, delivering a total of 5360 dwellings. The proposal provides for 44 new dwellings, inclusive of 7 affordable housing dwellings, in close proximity to the future town centre and transport links.

Given the above, the proposal is consistent with Principle 3.

Principle 4: Sustainability

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

Comment:

The application is accompanied by the required documentation to ensure that the building achieves the relevant sustainability targets in relation to energy, water, and thermal performance. The proposal exceeds the solar access, natural ventilation and deep soil targets specified in the ADG and also includes a rooftop PV array and substantial new canopy tree planting.

Given the above, the proposal is consistent with Principle 4.

Principle 5: Landscape

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

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

Comment:

The proposal provides for substantial deep soil areas around the perimeter of the development, with minimum ground floor building setbacks of 6m to the northern, eastern and western boundaries and 3.5m to the southern boundary. These deep soil zones will facilitate the provision of 35 new canopy trees and additional under-storey planting. On-slab landscaping is also integrated to soften the building edges and improve the amenity and outlook between Buildings A and B where the communal open space area is located.

The proposal is therefore consistent with Principle 5.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours.

Achieving good amenity contributes to positive living environments and resident well being.

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

Comment:

The proposed design affords a high level of amenity to future occupants of the development while minimising impacts upon the amenity of adjoining properties. Notably, the proposed setback distances and separation between Buildings A and B ensure that adequate sunlight, privacy and outlook is maintained for surrounding properties. These matters are assessed in detail in the below ADG compliance and against the relevant provisions of WDCP 2011 - Part D.

The proposal is therefore consistent with Principle 6.

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose.

Opportunities to maximise passive surveillance of public and communal areas promote safety.

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

Comment:

The proposal has adequate regard from the provisions of CPTED. The proposal defines the interface

between the public domain and private spaces within the development and affords opportunities for passive surveillance.

The proposal is therefore consistent with Principle 7.

Principle 8: Housing Diversity and Social Interaction

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

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

Comment:

The proposed development includes a mix of one, two and three-bedroom apartments to cater for a range of occupants and contributes to the variety of housing on offer in the locality. The proposal also includes formal and informal communal areas and is in close proximity to the future town centre, ensuring that future occupants will have access to suitable social interaction.

The proposal is therefore consistent with Principle 8.

Principle 9: Aesthetics

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

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

Comment:

The proposal incorporates a variety of suitable materials, colours and textures and for the reasons discussed in relation to the above Principles and the below provisions of the ADG, is found to be of appropriate proportions, composition and overall built form. The landscape outcome also contributes to the proposal's compatibility with the streetscape and desired future character.

The proposal is therefore consistent with Principle 9.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Consistent The proposal is orientated, sited and set back in response to the site constraints and opportunities and the applicable controls.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Consistent The proposed siting and layout of the proposed are compatible with the desired streetscape and will optimise solar access to the subject site and adjoining properties.
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	Consistent The proposed building incorporates safe and secure access from the street frontage and provides opportunities for casual surveillance of the public domain. The building facade and front setback treatment will retain and enhance the amenity of the public domain.

Communal and Public Open Space	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter) 	<p>Inconsistent - Acceptable on merit</p> <p>The proposal provides 2.4% (69.8m²) of the site area as communal open space. Given the proximity of the site to the future Frenchs Forest Town Centre and the associated outdoor recreational opportunities, the provision of substantial communal open space within the development is not considered essential. More than 50% of the provided communal open space will receive sunlight between 1pm and 3pm.</p>									
Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td>7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td><td></td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m		<p>Consistent</p> <p>The proposal provides 27% (783.16m²) of the site as deep soil area with minimum dimensions of 6m.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)									
Less than 650m ²	-	7%									
650m ² – 1,500m ²	3m										

	<table><tr><td>Greater than 1,500m²</td><td>6m</td></tr><tr><td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr></table>	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m									
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table><tr><th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p><i>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</i></p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>Inconsistent - Acceptable on merit</p> <p>The provisions of this control apply to the northern and western elevations of the development.</p> <p>Building A is 5 storeys and Building B is 6 storeys. Accordingly, 9m separation distances apply to the uppermost level of Building A and the two uppermost levels of Building B.</p> <p><u>North Elevation</u></p> <p>The Design Guidance specifies that an additional 3.0m separation should be provided where there is an interface to a lower density zone to provide for a transition in scale and increased landscaping. Despite this guidance, WDCP G9(5.2.3) includes a site-specific setback and envelope control intended to manage the interface between the subject site and the adjacent R2 zone (7 Bluegum Crescent).</p> <p>Given the proposal's level of compliance with this control and the below factors, the additional separation distance suggested by the ADG is not considered necessary in this particular</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												

		<p>circumstance.</p> <ul style="list-style-type: none"> The existing dwelling at No. 7 contains only 4 small windows at its southern elevation; and Noting that it is a southern elevation, any redevelopment on No. 7 could readily manage privacy impacts. <p>Building A provides a 6.0m setback from the ground floor up to Level 2 and a 7.2m minimum setback at Level 3; the glazing/wall line is set back 10.6m.</p> <p>Notwithstanding the above comments, it is noted that the design of Building A orientates a number of balconies and windows towards the adjoining property, and that this may lead to perceived or actual overlooking impacts. For this reason, a condition is recommended to incorporate additional privacy measures for the north-facing living room windows of apartments A105 and A205. The design of the northern elevation is considered otherwise acceptable for the following reasons:</p> <ul style="list-style-type: none"> The height of the ground floor windows/balconies is not significantly elevated to cause unreasonable privacy impacts;
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- The remaining windows at Levels 1 and 2 (at the 6m setback) are to bedrooms and studies, which are low-use rooms; and
- The solid lower portions of the Level 1 and 2 balustrades will minimise downward overlooking from balconies.
- The Level 3 balconies are further set back and incorporate a perimeter planter box that will restrict downward overlooking from the balconies.

It is noted that the Apartment AG01 and AG03 balconies are set back 5.4m and 4.4m respectively. These separation distances are considered acceptable given their height and the level of screening provided by the boundary fence and landscaping.

West Elevation

Building A provides minimum western setbacks of 10.6m, with the exception of the ground floor balcony that is set back 8m. Building A therefore achieves the minimum separation distance.

Building B provides an 8.2m setback at the ground floor, a 7.5m setback at Levels 1-3 and an 11.4m setback Level 4.

		<p>Level 3 is the fifth storey and is therefore non-compliant with the 9m requirement. This Level 3 wall includes a living room window, a balcony, 2 narrow windows to a bedroom and study and a corner balcony that is primarily orientated to the north. These limited openings are not anticipated to cause any unreasonable privacy impacts and are acceptable on merit.</p> <p><u>Building A and B Interface</u></p> <p>A minimum setback of 10.2m is provided between Buildings A and B and all windows at the southern elevation of Building A are translucent/frosted. The proposal is considered acceptable in this regard.</p>
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>Consistent</p> <p>The proposed pedestrian and building entries are easily identifiable and provide suitable access to the development.</p>
Vehicle Access	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p>Consistent</p> <p>The location of the proposed driveway is acceptable in relation to the streetscape and enables safe and suitable access to the site.</p>

Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p>Consistent</p> <p>The proposal includes adequate provision of car, motorcycle and bicycle parking to meet the requirements of the WDCP.</p>
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. 	<p>Consistent</p> <p>77% (34/44) of apartments within the development will receive the required hours of sunlight access.</p>
	<ul style="list-style-type: none"> A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter. 	<p>Consistent</p> <p>7% (3/44) of apartments within the development will receive no direct sunlight access.</p>

Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. 	<p>Consistent 73% (32/44) of apartments within the development are cross ventilated.</p>
	<ul style="list-style-type: none"> Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line. 	<p>Consistent The requirement is achieved.</p>
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p>	<p>Consistent The requirement is achieved.</p>

	<table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	
Minimum ceiling height														
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope													
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use													
Apartment Size and Layout	Apartments are required to have the following minimum internal areas: <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Consistent Each of the apartments exceed the minimum dimensions for the relevant number of bedrooms.		
	Apartment type	Minimum internal area												
	Studio	35m ²												
	1 bedroom	50m ²												
	2 bedroom	70m ²												
	3 bedroom	90m ²												
Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Consistent The requirement is achieved.													
Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Consistent The requirement is achieved.													
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Consistent The requirement is achieved.													
Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	Consistent The requirement is achieved.													

	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Consistent The requirement is achieved.															
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none">3.6m for studio and 1 bedroom apartments4m for 2 and 3 bedroom apartments	Consistent The requirement is achieved.															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Consistent The requirement is achieved.															
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Consistent The requirement is achieved.
	Dwelling Type	Minimum Area	Minimum Depth														
	Studio apartments	4m ²	-														
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
	The minimum balcony depth to be counted as contributing to the balcony area is 1m																
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	Inconsistent - Acceptable on Merit The 7 proposed ground floor units include balconies, rather than private open space areas. Given the steep topography of the site, the provision of courtyard-style open space areas would be impractical in this circumstance. The proposed balconies open out to the adjacent deep soil/podium planter areas and 5 of the 7 exceed the minimum area required by Objective 4E-1(1).															
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Consistent The requirement is achieved.															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Not Applicable															

Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:		Inconsistent - Acceptable on Merit Each of the proposed apartments incorporate adequate built-in storage or sufficient area for storage furniture, in addition to storage areas within the basement.
	Dwelling Type	Storage size volume	
	Studio apartments	4m ²	
	1 bedroom apartments	6m ²	
	2 bedroom apartments	8m ²	
	3+ bedroom apartments	10m ²	
At least 50% of the required storage is to be located within the apartment.			
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Consistent The building design is satisfactory in this regard.	
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent The number of single-aspect apartments fronting Frenchs Forest Road West is minimised and the building design is satisfactory in this regard.	
Configuration			
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Consistent The building design is satisfactory in this regard.	
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	Consistent The proposed building design includes terraced landscaping between the street frontages and ground floor facades, providing visual screening while enabling passive surveillance opportunities. The change in levels and full-length planter at the southern elevation of Building B provides an additional physical barrier between the ground floor apartments and the public domain.	

Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Consistent The facade design is well-articulated, incorporates a mix of contemporary materials and finishes and achieves an appropriate level of visual interest that will contribute to the character of the locality.										
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	Consistent The proposed flat roof design will be compatible with contemporary developments anticipated in the locality and incorporates PV panels. Communal open space is not proposed on the roof top and would have the potential to cause privacy impacts given the location of the adjoining R2 zone.										
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Consistent The proposed landscape design includes a substantial volume and variety of planting and is responsive to the site and surrounding context. The landscape outcome will ensure that the proposal achieves the desired character of the locality while respecting the bushland values of Frenchs Forest.										
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes: <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Consistent The proposed on-structure landscaped areas provide adequate soil volume, depth and area to support the growth of the proposed planting.
Plant type	Definition	Soil Volume	Soil Depth	Soil Area								
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent								

	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent
	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent
	Shrubs			500-600mm	
	Ground Cover			300-450mm	
	Turf			200mm	
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features				Consistent 23% (10/44) of the proposed apartments incorporate the Livable Housing Guideline's silver level universal design features.
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.				N/A
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.				N/A
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.				N/A
Performance					
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?				Consistent The minimum BASIX requirements are included on the submitted plans.

Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Consistent The proposal has been assessed by Council's Development Engineering and Water Management sections as complying with the Water Management for Development Policy.
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Consistent The proposal complies with Council's Waste Management Design Guidelines.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Consistent The material selection is satisfactory with regard to longevity and sustainability.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,*
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,*
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.*

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Planners Comment:

- (a) The proposal includes a compliant number of car parking spaces in accordance with the Warringah DCP requirements.
- (b) The proposal achieves the minimum internal area for each of the apartments.
- (c) The proposal achieves the minimum required ceiling height for each of the apartments.

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and*

(b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

(a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
(b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Planners Comment:

The proposed development is considered to have given adequate regard to the design quality principles of SEPP 65 and the objectives of the ADG.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1351041M_02 dated 25 September 2023).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	25	26

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Planners 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.

In response to the above requirements of Chapter 4, the applicant has submitted a Preliminary Environmental Site Investigation dated 25 October 2022 and prepared by AssetGeoEnviro. In its conclusion, the investigation states:

"Based on the site history review and field observations, DRM considers that the potential for significant unacceptable contamination to be present at the site is low and that the site is suitable for the proposed residential land use, from a contamination perspective.

DRM recommends that a waste classification assessment, targeting the infilled pools, demolished buildings and driveways, be conducted prior to commencement of the basement excavation. If any fill material is to be retained after the basement excavation, they will require validation by an environmental consultant."

Council's Environmental Health section advised that no formal referral is required in relation to this development based on the above conclusion that the risk of contamination is low.

Council is **satisfied** that the land is suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as conditions in the Recommendation of this report.

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	Building A: 13m	15.75m	21.15%	No
	Building B: 17.5m	19.9m	13.7%	No
Floor Space Ratio	Building A: 1:1 (1435.1m ²)	0.97:1 1396.9m ²	N/A	Yes
	Building B: 2:1 (2925.4m ²)	1.99:1 2916.3m ²	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.5 Additional permitted uses for particular land	Yes
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes
6.11 Affordable housing	Yes
8.3 Objectives for development in Frenchs Forest Precinct	Yes
8.5 Design excellence—Sites F, G and I	Yes
8.6 Minimum site areas—Sites G, H and I	Yes
8.7 Minimum street frontages—Sites G, H and I	Yes
8.10 Power lines—Site G	Yes

Detailed Assessment

2.5 Additional permitted uses for particular land

The site is located within Area 24 on the Additional Permitted Uses Map. However, the proposed development is for a residential flat building only and does not include any additional permitted uses.

Zone R3 Medium Density Residential

The underlying objectives of the R3 Medium Density Residential zone:

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

Comment:

The proposed development provides increased housing supply that is consistent with the medium density zoning of the site.

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

Comment:

The proposed residential flat building use is permitted with consent in the zone and will contribute to the variety of housing types available.

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

residents.

Comment:

The proposal does not impact the ability of surrounding land to provide facilities and services to meet the needs of residents.

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

Comment:

The proposed development includes adequate boundary setbacks and substantial planting that enables a landscaped setting consistent with the natural environment of the locality. In this regard, Council's Landscape Officer is satisfied that the proposed landscape design will maintain the character of the locality.

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

Comment:

The proposal is found to be of a high visual quality in its presentation to the surrounding public domain. The proposed development performs appropriately against the applicable controls and will positively contribute to the context of the site and surrounding locality.

4.6 Exceptions to development standards

Description of Non-compliance

Development Standard	Height of Buildings
Requirement	Building A: 13m
	Building B: 17.5m
Proposed	Building A: 15.75m (SW corner of roof)
	Building B: 19.9m (NW corner of roof)
Percentage Variation to Requirement	Building A: 21.15%
	Building B: 13.7%

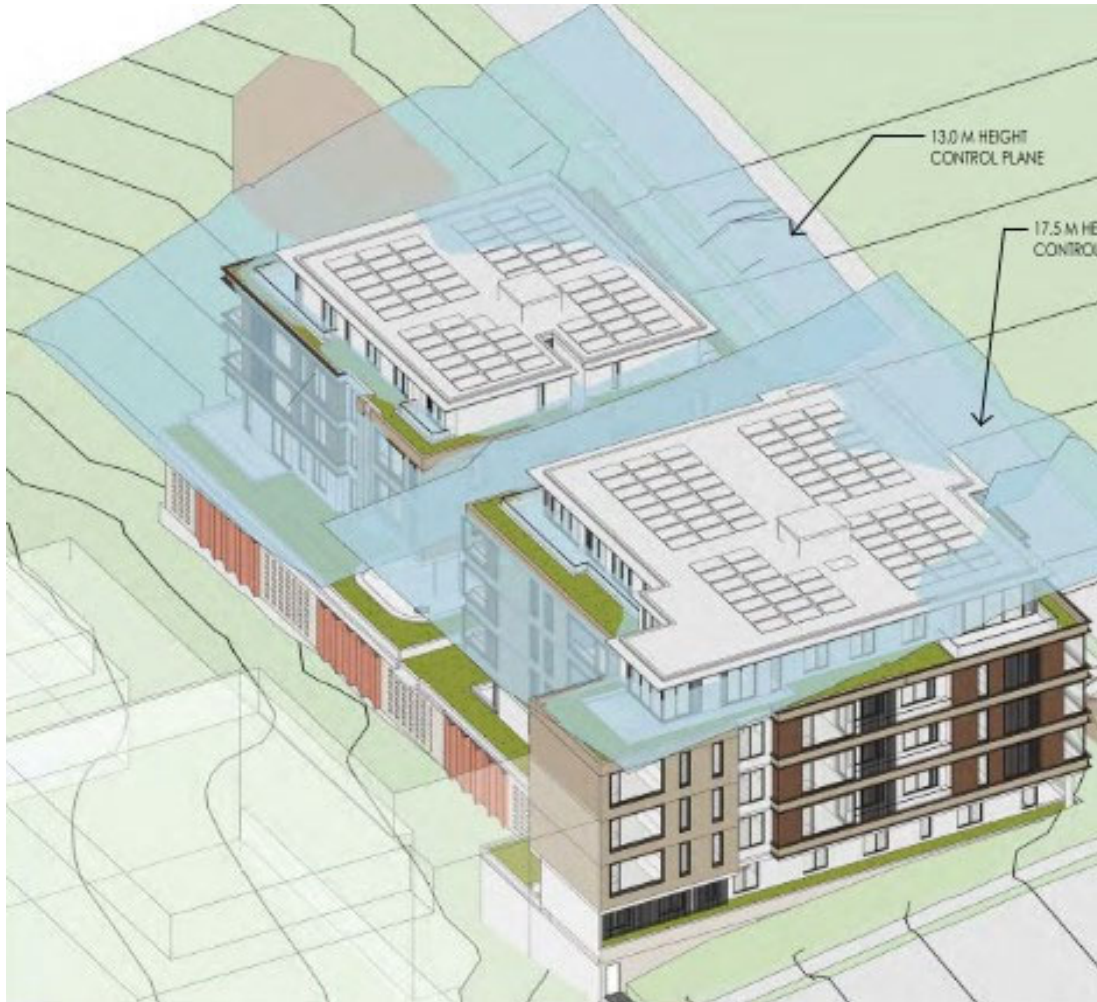


Figure 1 - Applicant's illustration of the proposed building height breach as measured from existing ground levels

The above height plane diagram is not certified, however the portions of buildings projecting above the height plane are generally in alignment with Council's assessment, and are presented in a more practical format than a two dimensional sectional drawing. On that basis, the diagrams are included for illustrative purposes. Figures 2 and 3 below indicate Council's calculation of the proposed maximum building height breaches.

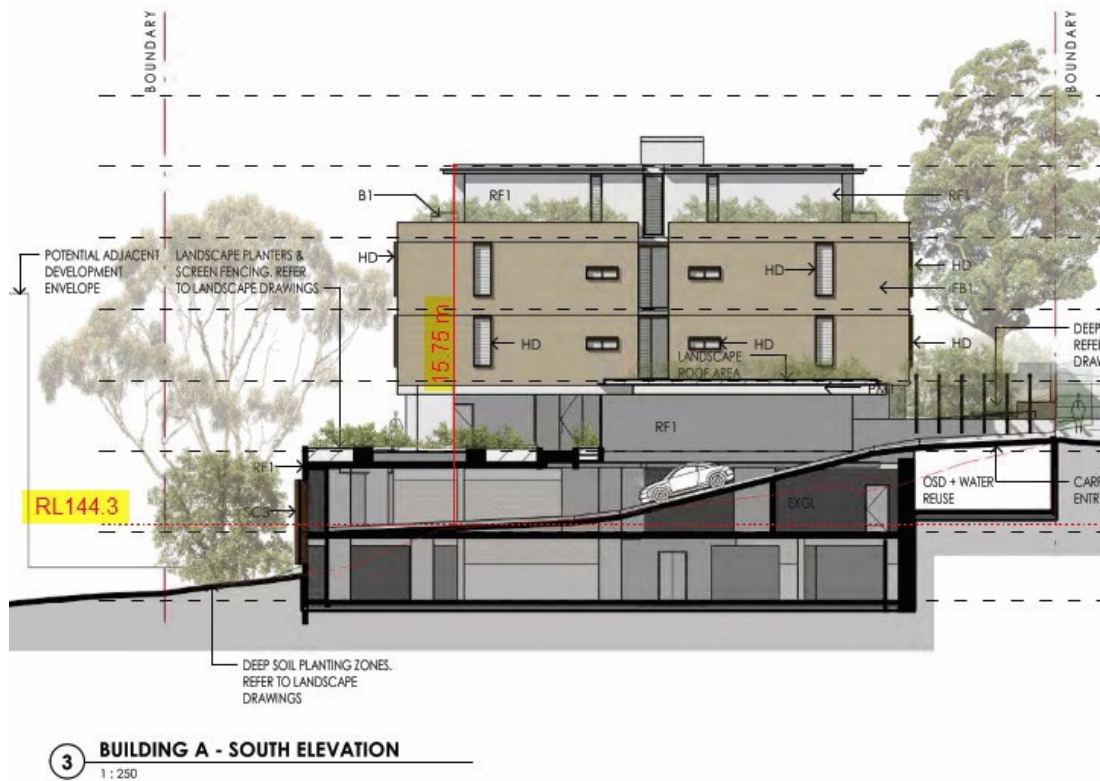


Figure 2 - Building A maximum building height breach



2 BUILDING B - NORTH ELEVATION
1 : 250

Figure 3 - Building B maximum building height breach

Assessment of Request to Vary a Development Standard

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to Development Standards

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

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

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

Comment:

Clause 4.3 – Height of Buildings development standard is not expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development

standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

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

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

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

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

- (b) that there are sufficient environmental planning grounds (EPG's) 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 environmental planning grounds advanced in the applicant's written request are considered as follows:

1. *That the site experiences a significant topographic fall from east to west and also includes a depression or valley running centrally through the site between Buildings A and B. The applicant claims that the steep and undulating topography of the site exacerbates both the numerical extent of the variation and the proportion of the built form that exceeds the height controls;*
Comment: It is agreed that the steep and irregular topography of the site makes a significant contribution to the extent of the variation through the centre of the site and at the western elevation. As discussed further below, the topography of the site inhibits the provision of a height compliant development that is of good design and achieves the density envisaged by the planning controls and the Frenchs Forest 2041 Place Strategy. Taken together with the other accepted EPG's, ground (1) is sufficient to justify the proposed variation.
2. *That the development is of good design notwithstanding the proposed building height variations and that the recessed design of the uppermost floor of each building minimises the visual prominence of the non-compliant elements. It is also argued that the proposal achieves the intent of the applicable built form controls;*
Comment: It is agreed that the non-compliant upper levels of each building are suitably designed and located with substantial setbacks to minimise the variation and the extent to which they will be perceived from surrounding land. The proposal is found form an appropriate response to the built form controls in the specific context of this site. Taken together with the other accepted EPG's, ground (2) is sufficient to justify the proposed variation.
3. *That the required vehicular access and parking has necessarily raised the buildings above the existing levels of the site, and that the built form responds to the surrounding context.*
Comment: Given the prohibition on vehicular access from Frenchs Forest Road West (the low point of the site frontage) and the slope of the site away from Bluegum Crescent (the high point

of the site frontage), the protrusion of the car parking levels above ground level is somewhat unavoidable. This is considered to be a site-specific constraint that directly contributes to the overall height of the development. Taken together with the other accepted EPG's, ground (3) is sufficient to justify the proposed variation.

4. *That the lift overrun, planter box and glazed balustrade elements breaching the height controls are appropriately sited, minor in extent and will not cause adverse impacts;*

Comment: The design of the building elements referenced are found to be acceptable and the lack of unreasonable amenity impacts contributes to the proposal's consistency with the objectives of the standard. However, these are considered to be general benefits of the overall development and are not identified as an EPG.

5. *That a reduction in building height and subsequent redistribution of gross floor area amongst the lower levels would result in an inferior design outcome with greater visual and amenity impacts;*

Comment: While the FSR standard is a maximum rather than an entitlement, it is agreed in this circumstance that the allocation of gross floor area across two separate buildings - including at the uppermost level of each building - is an appropriate outcome for the site and context. The provision of two distinct built forms and the separation between them minimises the overall bulk and amenity impacts of the development, while affording internal amenity for occupants of the development. Taken together with the other accepted EPG's, ground (5) is sufficient to justify the proposed variation.

6. *That the proposed building height variations contribute to the delivery of affordable housing within the locality;*

Comment: The proposed building height variations are not directly for the purpose of providing affordable housing and the proposal does not provide affordable housing in excess of the minimum requirement. Therefore, the provision of additional affordable housing provided in association with the GFA achieved at the uppermost levels is merely to satisfy the relevant provision of the WLEP and could not be considered as a sufficient EPG in isolation. However, it is noted that a height-compliant development would likely necessitate a reduction in GFA and a corresponding reduction in the required affordable housing contribution. As such, the public benefit of the affordable housing provided is acknowledged and when taken together with the other accepted EPG's, ground (6) is sufficient to justify the proposed variation.

7. *That the deletion of the uppermost floor of each building would reduce the provision of dwellings within the development and would not represent the orderly and economic use of land;*

Comment: Given the concurrence with environmental planning grounds (1), (2), (3) and (5) advanced by the applicant in relation to the design of the development, it is agreed that the deletion of the uppermost floor of each building would unnecessarily reduce the development potential and provision of dwellings within the development. Taken together with the other accepted EPG's, ground (7) is sufficient to justify the proposed variation.

8. *That the proposed building height variations do not result in significant material impacts in relation to character, overshadowing, privacy or view loss; and*

Comment: While the lack of unreasonable amenity impacts contribute to the proposal's consistency with the objectives of the standard, this is not identified as an environmental planning ground.

9. *That the proposed development achieves the objectives of the R3 zone, the objects of the EP&A Act and the aims of SEPP 65, notwithstanding the proposed variations.*

Comment: The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone, pursuant to Cl. 4.6(4)(a)(ii), however this consistency is not identified as an EPG. Similarly, consistency with the aims of SEPP 65 cannot be identified as an EPG. In this case, it is agreed that the proposal achieves aims (c), (d) and (g) of the EP&A Act and that the achievement of these aims constitute sufficient EPG's to justify the variation sought. Notwithstanding, ground (9) is not identified as an EPG in and of itself.

Accordingly, the Environmental Planning Grounds (1), (2), (3), (5), (6) and (7) advanced in the applicant's written request are sufficient to justify the variation to the building height development standard in the specific circumstances, those being:

- The significant and unique constraints presented by the irregular topography of the site;
- The lack of alternative vehicular access to the site necessitating that vehicular access be provided from the higher site frontage;
- The compliance of the development with the applicable floor space ratio standard; and
- The proposal is contextually appropriate and achieves the intent of the applicable planning controls and the Frenchs Forest 2041 Place Strategy.

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, that the structure is of good design and amenity and promotes the delivery and maintenance of affordable housing, therefore satisfying cls 1.3 (c), (d) 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 R3 Medium Density Residential zone. An assessment against these objectives is provided below.

Objectives of Development Standard

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

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

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

Comment:

The planning controls for the Frenchs Forest Precinct came into force on 1 June 2022 and the subject development is one of the first proposed under these controls. Surrounding and nearby development remains low-density residential development that does not achieve the height and scale permitted by the newly implemented controls permitting medium-density development. Thus, the proposal is not comparable in height and scale to existing surrounding development. However, the locality is expected to undergo a transition towards a medium density character as urban renewal occurs in accordance with the controls.

The proposed development represents an appropriate response to the site context and the applicable height and built form controls, such that it will achieve the intent of the controls and the desired future character of the locality. As detailed above, the proposed building height variation is largely a function of the site topography and limitations on vehicular access, and the siting and design of the height-breaching elements minimise both the extent to which they are perceptible from surrounding land and the resulting visual and amenity impacts.

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

Comment:

The primary height-breaching elements are located centrally within the site with substantial setbacks from surrounding properties and the public domain. The proposal is largely height-compliant as it presents to Bluegum Crescent, with the exception of a minor breach at the south-western corner of Building A. At the Frenchs Forest Road West frontage, Building B has a maximum variation of approximately 1.3m at the western extent of Level 4, becoming fully compliant towards the south-western corner; this non-compliant element is not anticipated to be visually intrusive, being set back 3m from the street wall (6.5m from the street frontage) and 6m from the western boundary.

At the northern elevation, Level 2 of Building A exceeds the height control by up to 1.8m, becoming compliant approximately 4m from the south-western corner of the building. Level 3 of Building A exceeds the height control by approximately 2.65m but is set back 10.6m from the northern boundary and 12.7m from the western boundary, ensuring that sufficient physical separation is provided to minimise any impacts arising from the non-compliance.

At the western elevation, the breaches associated with Level 2 of Building A and Level 3 of Building B are minor and are associated with the planter box elements at the western extent of the buildings. Western setbacks of 12.7m and 11.4m are provided to the uppermost levels of Building A and Building B respectively; these setbacks afford adequate articulation that will minimise the impacts of the non-compliances on the adjoining properties.

As assessed in this report, the proposed building height variations will not give rise to any unreasonable visual impacts or loss of views, privacy and solar access.

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

Comment:

The proposal represents an appropriate response to the applicable built form controls and incorporates substantial landscaping including provision of 35 native new native trees to offset the canopy loss. As such, the proposal will achieve an acceptable built form and landscape outcome that will minimise the impact of the development on the scenic quality of the surrounding bushland environment.

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

Comment:

For the reasons outlined above, the proposed design adequately manages the visual impact of the development as viewed from the public domain.

Zone Objectives

The underlying objectives of the R3 Medium Density Residential zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*
- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

Comment:

Notwithstanding the proposed building height variations, the proposal is found to be consistent with the underlying objectives of the zone, as assessed earlier in this report.

Conclusion:

In the specific circumstances where the steep and undulating topography of the site and the prohibition on vehicular access from Frenchs Forest Road West dictate that vehicular access must be provided from the high point of the site, preventing the car parking levels being located predominantly below ground, and the development achieves consistency with the objectives of the standards, the extent of the building height variation is considered acceptable.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the

Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

6.4 Development on sloping land

The site is mapped as Landslip Risk Area B and a Geotechnical Investigation has been submitted with the application. The report advises that the development can be carried out without adverse impacts to adjoining properties or stormwater runoff, subject to the included recommendations. The recommendations of the Geotechnical Investigation are incorporated into the Recommendation of this report.

6.11 Affordable housing

The site is identified within the “10%” area on the *Affordable Housing Contributions Scheme Map* of WLEP 2011.

Pursuant to clause 6.11(2) of WLEP 2011, development consent must not be granted unless the consent authority is satisfied that the proportion of the gross floor area of the proposed development used for affordable housing is not less than 10% (being the amount nominated on the Map).

The application proposes the dedication of seven (7) affordable housing dwellings, equivalent to 9.18% (396m²) of the proposed gross floor area. The applicant seeks to make up the balance of the 10% requirement through a monetary contribution paid to Council in accordance with the provisions of this control. A condition of consent is recommended in this regard.

The requirements of this control are satisfied, subject to conditions.

8.5 Design excellence—Sites F, G and I

In accordance with the provisions of clause 8.5(2) of WLEP 2011, development consent must not be granted unless the consent authority considers that the development exhibits design excellence.

The matters to be considered when determining whether a development exhibits design excellence are outlined in clause 8.5(3) of WLEP 2011, and are considered as follows:

(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,

Comment:

For the reasons discussed in this report, the proposal is found to exhibit a high standard of architectural design. The proposal is designed, sited and orientated such that it will afford a high level of amenity for future occupants, will be compatible with the desired character of the locality and will maintain adequate levels of amenity for the public domain and surrounding properties. The selected materials and detailing are appropriate for the building typology and surrounding context.

(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,

Comment:

The proposal will promote urban renewal and contribute to the visual quality and amenity of the public domain. The proposed massing, articulation and finishes of the built form respond to the surrounding character and enable a positive landscape outcome for the site.

(c) whether the development detrimentally impacts on view corridors,

Comment:

The proposal will not detrimentally impact upon view corridors, noting that there are no significant views available from surrounding land. The separation of the built form into two distinct buildings will ensure that outlooks are maintained for residents of adjoining properties and future occupants of the development.

*(d) how the development addresses the following matters—
(i) the suitability of the land for development,*

Comment:

The proposed development is suitable for the R3 Medium Density zoning of the site. The proposal's performance against the relevant built form controls demonstrates that the proposed use, scale and density are consistent with those intended for the site.

(ii) existing and proposed uses and use mix,

Comment:

The proposal is considered to respond to the existing and proposed uses of adjoining properties. The development provides an appropriate interface to the adjoining R2 zone to the north and will not unreasonably impact the development potential of the adjoining R3 zoned properties to the west.

(iii) heritage issues and streetscape constraints,

Comment:

There are no identified heritage items or values in the vicinity of the site. The proposal will not give rise to adverse streetscape impacts for the reasons discussed in this report and addresses the traffic and parking constraints in Bluegum Crescent through the provision of a compliant vehicular access and parking arrangement.

(iv) the relationship of the development with other existing or proposed development on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,

Comment:

The proposal has adequate regard for its relationship with existing and proposed development on adjoining properties. The proposed front and northern side setbacks to Building A provide for a transition between the proposal and the low-density development to the north. This transition ensures an appropriate visual relationship between the proposed medium and existing low density built forms and provides a reasonable level of amenity to the adjoining property. The siting of the proposal in relation to the western boundary will maintain the amenity of the existing adjoining developments and minimise any impact upon the future re-development of those R3

zoned properties; sufficient separation is provided to facilitate privacy, solar access and outlook for future developments to the west.

(v) *bulk, massing and modulation of buildings,*

Comment:

The proposed bulk, massing and modulation of the development is suitable for the site and its context in that:

- The proposal complies with the applicable FSR controls across Buildings A and B;
- The separation of bulk into two buildings with a break fronting Frenchs Forest Road West is generally consistent with the Master Plan for the Frenchs Forest Town Centre (Figure 4 below), and affords visual relief as viewed from surrounding properties and the public domain;
- The proposal provides a continuous street frontage to Frenchs Forest Road West as required by the WDCP controls;
- The buildings are effectively articulated to reduce the perceived length of their facades;
- The proposed northern and western setbacks ensure a transition in height and bulk between Frenchs Forest Road West and the adjoining R2 zone to the north; and
- The proposed upper levels of each building are set back from the levels below and incorporate on-slab perimeter planters to minimise their visual bulk and impact.



Figure 4 - Illustrative Master Plan for the Frenchs Forest Town Centre (subject site shown as a white rectangle)

(vi) *street frontage heights,*

Comment:

The proposal presents to Bluegum Crescent as 4 and 5 storeys and largely complies with the building height standard at this frontage. Building B presents to Frenchs Forest Road West as a maximum of 6 storeys in accordance with the Character Statement at WDCP 5.2; the relatively minor building height variation of up to 1.3m at the western end of the frontage is set back from the street wall and western boundary and will not detract from the proposal's consistency with the desired future character.

(vii) environmental impacts including overshadowing, wind and reflectivity,

Comment:

The proposal maintains a compliant level of solar access for adjoining properties and the proposed western setbacks are such that future medium-density developments to the west are capable of achieving compliant solar access. Given the proposed facade articulation and break between Buildings A and B, no adverse wind or reflectivity impacts are anticipated.

(viii) the achievement of the principles of ecologically sustainable development,

Comment:

The application is supported by a BASIX Certificate which confirms that the proposed development meets the relevant requirements. The site layout and design facilitates the exceedance of the ADG solar access and natural ventilation requirements, minimising the need for heating and cooling. The majority of the roof area comprises a PV array and rainwater is to be re-used for irrigation and the car wash bay. In response to the sustainability advice provided by the DSAP, the applicant has advised of their intention to explore further sustainability and energy efficiency measures through the design development stage.

(ix) pedestrian, cycle, vehicular and service access, circulation and requirements,

Comment:

The proposal makes adequate provision for access, servicing and circulation. A compliant number of bicycle and car parking spaces is provided within the development in accordance with the controls.

(x) the impact on, and proposed improvements to, the public domain,

Comment:

As discussed above, the proposed design will contribute to the visual quality of the public domain and encourage urban renewal in the precinct. The proposal also makes provision for the future undergrounding of the existing powerlines on Frenchs Forest Road West as required.

(xi) the quality and integration of landscape design.

Comment:

The proposal includes a detailed landscape design incorporating a range of ground covers, mid-storey vegetation and canopy trees, incorporating compensatory tree planting at a ratio of 2:1.

The landscape design integrates with the built form and contributes to the proposal's positive landscape outcome, setting and response to the desired future character.

In accordance with the provisions of clause 8.5(4), development consent must not be granted unless a design review panel has reviewed the development, and the consent authority considers the findings of the panel.

Comment:

On lodgement, the application was referred to Council's DSAP, who made a number of recommendations to improve the quality of the design, landscape and sustainability aspects of the proposed development. As discussed in the DSAP referral section of this report, the amended proposal incorporated numerous changes in response to the DSAP recommendations. In light of the amendments made with regard to those recommendations, Council is satisfied that the proposed development does exhibit design excellence.

Conclusion

Based on the above assessment and the commentary provided in relation to the DSAP recommendations in this report, the proposal is considered to satisfy the provisions of this clause.

8.10 Power lines—Site G

Requirement

8.10 Power lines—Site G

In deciding whether to grant development consent to development on Site G, the consent authority must consider whether the development includes adequate measures to ensure that existing power lines on Site G will be relocated underground.

Comment:

Council has resolved that the undergrounding of the existing power lines for the entire length Frenchs Forest Road West will be undertaken concurrently.

The proposal maintains a clear 3.5m setback to Frenchs Forest Road West to facilitate the future undergrounding of the existing power lines, thereby complying with the control.

Warringah Development Control Plan

Built Form Controls

Built Form Control - G9	Requirement	Proposed	% Variation*	Complies
5.2.3 Front Setbacks	(1) A 3.5m setback is to be provided on the northern side of Frenchs Forest Road West.	B2-L3: 3.5m	N/A	Yes
	(2) Development with a frontage to Sylvia Place, Bluegum Crescent and Gladys Avenue must be setback a minimum of 6.5m.	B1, B2: 6.2m	N/A	Yes
		Building A: 6.5m-8.9m	N/A	Yes
		Building B: 4.5m-7.7m	30.8%	No

5.2.3 Side and Rear Setbacks	(1) Development with frontage to Frenchs Forest Road West shall have a nil side setback to ensure a continuous frontage to the street.	Building B B2-L3: Nil (0m)	N/A	Yes
	(3) Development adjacent to the R2 Low Density Residential and RE1 Public Recreation Zone must provide a minimum setback of 6m from the side or rear property boundary for the first 2 storeys. Development above 2 storeys is to be set back within a 45-degree angle, projected from a height of 2 storeys. Refer to Figure 32.	Setback: 6m Envelope: 0.7m breach	5.5%	No
5.2.4 Street Wall and Upper Floor Setbacks	(1) Development fronting Frenchs Forest Road West shall have the fifth floor set back at least 3m from the street wall.	L4: 3m	N/A	Yes
5.2.8 Landscaped Area	(1) For all residential flat building developments, landscaped area is to be at least 45% of the site area. (1304m ²)	Exc. planters: 31.3% 907.4m ²	30.4%	No
		Inc. planters 45.7% 1325m ²	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes

D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	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
2 Desired future character	Yes	Yes
5.2 Precinct 05 Frenchs Forest Road West Neighbourhood	No	Yes
6 Parking	Yes	Yes
8 Sustainability	Yes	Yes
9 Water management	Yes	Yes
10 Waste management	Yes	Yes

Detailed Assessment

C2 Traffic, Access and Safety

The application has been assessed by Council's Traffic section, who concluded that the proposal makes provision for safe and appropriate vehicular access, parking, loading and servicing.

D3 Noise

The application is accompanied by an acoustic assessment, the recommendations of which are incorporated into the conditions of consent.

A further condition is included to ensure that the noise associated with the ongoing operation of mechanical plant equipment complies with this control.

D6 Access to Sunlight

Compliance with Control

Requirements

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

Comment:

The proposal causes varying degrees of overshadowing of the Frenchs Forest Road West and Bluegum Crescent road reserves throughout the day. The proposal does not unreasonably overshadow the public domain and complies with this control.

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.

Comment:

The proposal will cause overshadowing of the rear (eastern) portions of Nos. 24, 25 and 26 Sylvia Place between 9am and 10am. By 10am the impact is limited to a narrow strip adjacent to the eastern boundary of No. 26 and by 11am the impact to this property is negligible. At 2pm there is minor impact to the front setback of No. 2 Bluegum Crescent and at 3pm there is moderate overshadowing of the front front setbacks of Nos. 2, 4 and 6 Bluegum Crescent.

Notwithstanding the above overshadowing impacts, all surrounding properties will maintain a compliant level of sunlight access throughout the day in compliance with the control.

Based on the above assessment, the proposal achieves compliance with the control and is **supportable** with regard to sunlight access.

D7 Views

There are no existing significant views identified from surrounding properties.

The proposed development is appropriately sited and designed to avoid unreasonable impacts upon the views and outlooks available from surrounding properties.

D8 Privacy

The proposal is found to be acceptable in relation to privacy for the reasons discussed in the ADG assessment section of this report.

D15 Side and Rear Fences

A condition is recommended to ensure compliance with the requirements of the control.

D18 Accessibility and Adaptability

The submitted access report advises that the proposal is capable of achieving compliance with requirements 1-8 of the control.

Requirement 9 dictates that 10% (5) of the apartments be capable of being adapted (Class C) under AS4299.

The proposed development includes 5 adaptable apartments in accordance with the requirement.

2 Desired future character

Character Statement

The Frenchs Forest Road West Neighbourhood will provide a contextually appropriate interface to surrounding low density residential areas, whilst increasing housing diversity and activating Frenchs Forest Road West with a range of office, health and medical uses to support the town centre and Hospital. The precinct will be characterised by:

- *High quality medium rise apartment buildings, up to 6 storeys to create a new urban residential character to the north of Frenchs Forest Road West.*
- *Mixed use buildings with a range of ground floor uses, located directly opposite the town centre on Frenchs Forest Road West to create an active and engaging streetscape.*
- *Non-residential ground floor uses along Frenchs Forest Road West, including medical and health related uses, supporting the Northern Beaches Hospital.*
- *A pedestrian focused street at Frenchs Forest Road West to deliver a high quality streetscape on Frenchs Forest Road West.*

Comment:

The proposal does not incorporate any of the additional permitted uses applying to the site, however this does not preclude consistency with the desired future character; the proposed residential flat building land use is anticipated by the applicable zoning and planning controls and will contribute to housing diversity in the locality. The proposed development exhibits appropriate interfaces to the low-density residential zone to the north, the pedestrian focused-southern street frontage and the adjoining properties to the west. The proposal is considered to be of high quality design, is a maximum of 6 storeys at any point and will contribute positively to the new urban residential character of the locality. The prominent perimeter landscaping responds to the desired urban forest character formed by green streets and open space.

For the reasons discussed in this report, the proposed development is considered to achieve the desired future character of the Frenchs Forest Road West Neighbourhood and the broader Frenchs Forest Town Centre.

5.2 Precinct 05 Frenchs Forest Road West Neighbourhood

5.2.3 Building Setbacks

Compliance with Control

Front Setbacks

1. *A 3.5m setback is to be provided on the northern side of Frenchs Forest Road West. The front setback is to be finished with high quality materials and an active pedestrian frontage across Frenchs Forest Road West. The front setback must not be used for car parking or vehicular access.*
2. *Development with a frontage to Sylvia Place, Bluegum Crescent and Gladys Avenue must be setback a minimum of 6.5m.*
3. *Building setbacks from street frontages are to be landscaped and free of any structures, basements, car parking or site facilities other than driveways, mail boxes, garbage storage areas and fences.*

Comment:

The proposal includes minimum 3.5m setback to Frenchs Forest Road West and the southern facade is well-designed, articulated and finished to contribute to the visual interest of the streetscape. Vehicular access to the site is provided via Bluegum Crescent. The proposal **complies** with requirement (1).

The proposed building setbacks to Bluegum Crescent vary across the frontage. Building A fully complies with the 6.5m requirement, with the exception of the 6.2m setback to the car parking levels. The proposed Building B setbacks vary from 4.5m to 6m between the ground floor and Level 3 and

from 6.2m to 7.7m at Level 4. The proposal **does not comply** with requirement (2).

The proposed street-front setbacks comprise deep soil landscaping, with structures being limited to the necessary driveway and pedestrian entries, bin store area and electrical kiosk. The proposal **complies** with requirement (3).

Side and Rear Setbacks

3. Development adjacent to the R2 Low Density Residential and RE1 Public Recreation Zone must provide a minimum setback of 6m from the side or rear property boundary for the first 2 storeys. Development above 2 storeys is to be set back within a 45-degree angle, projected from a height of 2 storeys. Refer to Figure 32.

Comment:

Building B has a nil western side setback at the southern frontage. The proposal **complies** with requirement (1).

The proposed Building A largely complies with the envelope prescribed by requirement (3) with the exception of a 0.7m x 4.2m breach at the western edge of Level 3 shown shaded red on the below northern elevation plan. The proposal **does not comply** with requirement (3).



Figure 5 - Illustration of envelope non-compliance in relation to Requirement (3) above

Merit Consideration

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

- A. To provide a consistent streetscape along Frenchs Forest Road West in order to achieve the Desired Future Character and Character Statement for the Precinct.*
- B. To provide landscaped streetscapes consistent with those of adjacent low-density residential areas for all street frontages other than Frenchs Forest Road West.*
- C. To ensure spatial separation between buildings that will provide an appropriate interface to adjoining low density residential areas.*

Comment:

The proposal provides for a consistent streetscape along Frenchs Forest Road West as intended by the controls and the desired future character. The proposed setbacks to Frenchs Forest Road West and Bluegum Crescent are sufficient to enable a landscape outcome that is compatible with the surrounding low-density residential areas. Building B provides 6m setbacks at the ground floor and levels 1 and 2, with an increased setback of 10.6m to level 3. Notwithstanding the minor non-compliance with the prescribed northern envelope control, these proposed setbacks facilitate an appropriate interface to the adjoining R2 Low Density Residential zone.

The proposal is found to be **consistent** with the underlying objectives of the control.

5.2.4 Street Wall and Upper Floor Setbacks

Compliance with Control

- 1. Development fronting Frenchs Forest Road West shall have the fifth floor set back at least 3m from the street wall.*

Comment:

The fifth floor (level 4) of Building B is set back 3m from the street wall. The proposal **complies** with requirement (1).

Note: Requirement (4) is not considered applicable to the subject proposal. The requirement is worded such that it is to be read in conjunction with the preceding requirement (3) as below (bold emphasis added):

- 3. Developing fronting Gladys Avenue shall have the fourth floor set back at least 3m from the street wall.*
- 4. Despite Requirement 3, any portion of a building within 12m of R2 Low Density Residential zoned land must be no more than 2 storeys.*

Requirement (3) applies to "development fronting Gladys Avenue"; as the proposal does not have any frontage to Gladys Avenue requirement (3) does not apply to the subject development. Given the explicit interrelationship between the two provisions, requirement (4) does not apply to the proposal either. Furthermore, an alternate setback and envelope control relating to the interface between the R3 and R2 zones that does apply to the subject proposal exists at *WDCP 5.2.3 - Side and rear setbacks* (3) and is assessed above.

5.2.8 Landscaped Area

Compliance with Control

1. For all residential flat building developments, landscaped area is to be at least 45% of the site area.

The control provides that *Landscaped area* is calculated as follows:

- a) Driveways, paved areas, roofed areas, tennis courts, car parking and stormwater structures, decks etc. and any open space areas with a dimension of less than 2m are excluded from the calculation;
- b) The water surface of swimming pools and impervious surfaces which occur naturally such as rock outcrops are included in the calculation;
- c) Landscaped areas must be at ground level (finished); and
- d) The minimum soil depth of land that can be included as landscaped area is 1m.

Comment:

The proposal includes a landscaped area equivalent to **31.3%** (907.4m²) of the site area, calculated strictly in accordance with the above requirements (a)-(d).

For the reasons discussed below, it is considered reasonable in this case to permit an exception to the above requirements (c) and (d) in this case.

The landscaped area breach is largely a function of the topography of the site, whereby the slope of the land away from Bluegum Crescent necessitates the provision of semi-basement car parking. The resulting podium level precludes the inclusion of at-grade landscaped area in accordance with requirement (c). Moreover, the provision of a 1.0m minimum soil depth in accordance with requirement (d) would further raise the height of the podium structure above the natural levels of the site and increase the bulk of the development. Council's Landscape Officer raised no objection to the proposed on-slab planter soil depths nor to the overall landscape outcome of the proposal.

Allowance of the above exceptions to include the proposed ground floor on-structure landscaping results in an overall landscaped area equivalent to **45.7%** (1325m²) of the site area, which meets the 45% required by the control.

Merit consideration

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

- A. To ensure that new development achieves the Desired Future Character and Character Statement for the precinct.
- B. To retain existing trees, encourage new tree plantings and maximise deep soil areas.
- C. To ensure communal open space minimises amenity impacts to adjoining neighbours.

Comment:

For the reasons discussed in this report, the proposal is found to achieve the DFC and Character Statement for the precinct. The proposal is unable to facilitate the retention of existing trees, but includes is considered to maximise deep soil areas and includes a detailed landscape design incorporating compensatory planting for prescribed trees at a ratio of 2:1. The communal open space area is appropriately located and is not anticipated to unreasonably impact the amenity of adjoining properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is **supported** in this particular circumstance.

6 Parking

Council's Traffic section has reviewed the application and is satisfied that the development provides a compliant quantum of residential, visitor, car share, electric vehicle and accessible parking spaces and motorcycle and bicycle parking.

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

Contributions

Frenchs Forest Town Centre Section 7.11 Contributions Plan 2022

The proposal is subject to the application of Frenchs Forest Town Centre Section 7.11 Contributions Plan 2022.

A monetary contribution of \$800,000 is required for the provision of local infrastructure and services commensurate with the increased demand resulting from development in the Frenchs Forest Place.

The contribution is calculated based on 40 additional dwellings (7x1-bed, 31x2-bed and 2x3-bed). A credit for the four existing dwellings has been provided.

Special Infrastructure Contributions

The Frenchs Forest Special Infrastructure Contribution (SIC) came into effect on 7 December 2021. The SIC is managed by the NSW Government and levies monetary contributions to fund improvements to identified regional infrastructure.

The Housing and Productivity (HAP) contribution came into force on 1 October 2023 and is implemented by the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.

The HAP repeals the SIC, however Schedule 5 contains savings and transitional provisions for applications submitted prior to 1 October 2023. DA2023/0285 was submitted prior to 1 October 2023, therefore the SIC applies to this application. A SIC condition has been imposed in accordance with the Ministerial Directions.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
-
-

- All relevant and draft Environmental Planning Instruments;
Warringah Local Environment Plan;
• Warringah Development Control Plan; and
• Codes and Policies of Council.

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

The application represents one of the first developments proposed within the new Frenchs Forest Precinct and will make a significant contribution (44 dwellings) to the Frenchs Forest 2041 Place Strategy's target of providing 2000 new dwellings within the precinct. The proposal also has the potential to be a catalyst and promote further development and urban renewal within the precinct, which is yet to occur to any significant extent since the implementation of the strategy.

The subject site is constrained by its steep and irregular topography and by the prohibition on vehicular access via Frenchs Forest Road West. The combined effect of these constraints on the overall building height form the primary cause and justification for the proposed variation to the height of buildings development standard under the WLEP 2011. The design response to the site constraints is appropriate and minimises the visual and amenity impacts resulting from the variation. In view of the specific circumstances discussed in this report, the applicant's Clause 4.6 written request is successful in demonstrating that the proposal is consistent with the objectives of the building height standard and provides sufficient environmental planning grounds for the variation. If approved, these circumstances should be stated in the Reasons for Determination.

Notwithstanding the proposed building height variation, the proposed height, scale, massing and density of the development is generally consistent with the built form and character outcomes envisaged by the planning controls. The proposed setbacks, distribution of the built form across two buildings and the recessed design of the upper levels appropriately articulate the bulk of the development and minimise its visual and amenity impacts upon the streetscape and adjoining properties.

While the amended application does not fully incorporate all recommendations made by the DSAP, the revised proposal represents a significantly improved design that is considered to satisfactorily address the Panel's concerns. In light of the amendments made and the merits and the overall scheme, the proposal is found to exhibit design excellence as considered against WLEP Clause 7.5.

The proposal demonstrates that the site is capable of being developed generally in accordance with the planning controls to achieve an appropriate planning outcome and avoid prejudicing the development potential of the adjoining R3 zoned properties to the west. While the proposal includes variations the height of buildings standard and several WDCP built form controls, the benefits arising from the development are found to outweigh these non-compliances, particularly in relation to urban renewal, streetscape and public domain improvements and contribution to housing supply, affordable housing and the realisation of the Frenchs Forest 2041 Place Strategy.

In response to Council's advertising, a total of 18 submissions were received in objection to the proposal. The amendments made to the proposal following lodgement of the application generally resolve the concerns raised in relation to built form non-compliances, landscaping and amenity impacts. Conditions of consent are recommended to address concerns in relation to privacy and impacts associated with demolition, excavation and construction impacts. The issues raised in the submissions are addressed in detail in this report and are not considered to warrant refusal of the application in the public interest.

On balance, the assessment concludes with a recommendation that the NBLPP should **APPROVE** the application, subject to the conditions included in the recommendation. 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 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 DA2023/0285 for Demolition works and construction of a residential flat building with basement car parking including strata subdivision on land at Lot 62 DP 30700, 5 Bluegum Crescent, FRENCHS FOREST, Lot 61 DP 30700, 3 Bluegum Crescent, FRENCHS FOREST, Lot 59 DP 30700, 142 Frenchs Forest Road West, FRENCHS FOREST, Lot 60 DP 30700, 1 Bluegum Crescent, 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

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA0.01	J	Project Statistics & Notes	Kann Finch	15 September 2023
DA0.30	J	Demolition Plan	Kann Finch	15 September 2023
DA1.00	J	Site Plan	Kann Finch	15 September 2023
DA1.01	J	Basement 2 Floor Plan	Kann Finch	15 September 2023
DA1.02	J	Basement 1 Floor Plan	Kann Finch	15 September 2023
DA1.03	J	Ground Floor Plan	Kann Finch	15 September 2023
DA1.04	J	Level 1-2 Plan	Kann Finch	15 September 2023

DA1.05	J	L3 Floor Plan	Kann Finch	15 September 2023
DA1.06	J	L4 Floor Plan	Kann Finch	15 September 2023
DA1.07	J	Roof Plan	Kann Finch	15 September 2023
DA2.01	J	Sections	Kann Finch	15 September 2023
DA2.02	J	Sections	Kann Finch	15 September 2023
DA2.03	J	Sections	Kann Finch	15 September 2023
DA3.01	J	North Elevations	Kann Finch	15 September 2023
DA3.02	J	South Elevations	Kann Finch	15 September 2023
DA3.03	J	East Elevation	Kann Finch	15 September 2023
DA3.04	J	West Elevation	Kann Finch	15 September 2023
DA6.01	J	Pre + Post Adaption Plans	Kann Finch	15 September 2023
DA6.02	J	Pre + Post Adaption Plans	Kann Finch	15 September 2023
DA6.03	J	Pre + Post Adaption Plans	Kann Finch	15 September 2023
DA6.10	J	Carpark Ramp Sections	Kann Finch	15 September 2023
LP-01	E	Hardscape Plan	Conzept	18 September 2023
LP-04	E	Landscape Plan - Proposed Trees	Conzept	18 September 2023
LP-05	E	Landscape Plan - Understorey (Block B)	Conzept	18 September 2023
LP-06	E	Landscape Plan - Understorey (Block A)	Conzept	18 September 2023
LP-07	E	Landscape Plan - L3	Conzept	18 September 2023
LP-08	E	Landscape Plan - L4 & Green Roof	Conzept	18 September 2023
LP-09	E	Elevation 1 & 2	Conzept	18 September 2023
LP-10	E	Elevation 3	Conzept	18 September 2023
LP-11	E	Section A & Section B	Conzept	18 September 2023

LP-12	A	Details & Specification	Conzept	10 January 2023
LP-13	E	Details 2 - Plant Schedule & Matrix	Conzept	18 September 2023
LP-14	E	Details 3	Conzept	18 September 2023
Sheet 1	-	Subdivision Plan - Location Plan	Anthony John Bennett	14 September 2023
Sheet 2	-	Subdivision Plan - Basement 2	Anthony John Bennett	14 September 2023
Sheet 3	-	Subdivision Plan - Basement 1	Anthony John Bennett	14 September 2023
Sheet 4	-	Subdivision Plan - Ground	Anthony John Bennett	14 September 2023
Sheet 5	-	Subdivision Plan - Level 1	Anthony John Bennett	14 September 2023
Sheet 6	-	Subdivision Plan - Level 2	Anthony John Bennett	14 September 2023
Sheet 7	-	Subdivision Plan - Level 3	Anthony John Bennett	14 September 2023
Sheet 8	-	Subdivision Plan - Level 4	Anthony John Bennett	14 September 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. 1351041M_02	-	Lin & Associates	25 September 2023
Arboricultural Impact Assessment Report	-	Raintree Consulting	18 October 2023
Traffic and Parking Assessment Report (Amended)	-	Terraffic	29 January 2023
Geotechnical Investigation	2	AssetGeoEnviro	6 February 2023
Stage 1 Preliminary Site Investigation	0	AssetGeoEnviro	25 October 2022
Hazardous Materials Survey	0	AssetGeoEnviro	25 October 2022
BCA Assessment Report	1	Jensen Hughes	6 February 2023

Access Assessment Report	2	Jensen Hughes	7 February 2023
Acoustic Report	1	PWNA	3 February 2023
Waste Management Plan	1	Novati Constructions	February 2023
Operational Waste Management Plan	E	Elephants Foot	1 June 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response - OH and UG Cables	14 April 2023
Ausgrid	Ausgrid Referral Response - Underground Cables	14 April 2023

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

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a residential flat building, in accordance with the Dictionary of the Warringah Local Environmental Plan 2011, as follows:

residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing.

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. **Affordable Housing - Dedication of Dwellings**

The affordable housing dwellings (shown on Plan DA1.04, DA1.05, revision J, dated 15

September 2023 and listed below must be dedicated to Northern Beaches Council within 28 days of the later of:

1. the registration of any subdivision of the development creating separate title for the affordable housing dwellings; and,
2. the issue of an Occupation Certificate for those dwellings as outlined below:
 - a. list units, car spaces, and adaptable units, gross floor area of each unit

Unit	Car Space	Gross floor area (m ²)
A102	1	53
A103	1	52
A202	1	53
A203	1	52
B107	1	62
B207	1	62
B307	1	62
	TOTAL	396

Reason: To ensure the affordable housing is provided in accordance with clause 6.11 of *Warringah Local Environmental Plan 2011*.

5. **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.

6. General Requirements

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

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. 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.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

7. Security Bond

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

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

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

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

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

8. Frenchs Forest Town Centre - Contribution Condition

Prior to issue of any Construction Certificate the applicant must pay a total development contribution to Council of \$800,000 in accordance with the Frenchs Forest Town Centre Contributions Plan 2022.

This contribution is calculated based on 40 additional dwellings (7x1-bed, 31x2-bed and 2x3-bed). A credit for the four existing dwellings has been provided.

The monetary contribution will be adjusted at the time of payment in accordance with the provisions of the Frenchs Forest Town Centre Contributions Plan 2022. Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Principal Certifier.

The Applicant may negotiate with Council for the direct provision of other facilities and services, and/or the dedication of land (other than land identified above) in lieu of the monetary contribution above (or any portion of that monetary contribution) through a Planning Agreement between Council and the Applicant in accordance with the Frenchs Forest Town Centre Contributions Plan 2022 and Council's Planning Agreement Policy (as amended). The Planning Agreement between the Applicant and Council must be finalised, formally signed and in place prior to the payment of the monetary contribution.

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 that enables the provision of local infrastructure and services commensurate with the increased demand resulting from development in the Frenchs Forest Place.

9. Special Infrastructure Contributions (Frenchs Forest) Determination 2021

A special infrastructure contribution must be made in accordance with the Environmental

Planning and Assessment (Special Infrastructure Contribution – Frenchs Forest) Determination 2021 (as in force when this development consent takes effect).

A person may not apply for a Construction Certificate in relation to development the subject of this development consent unless the person provides, with the application, written evidence from the Department of Planning and Environment that the special infrastructure contribution for the development (or that part of the development for which the certificate is sought) has been made or that arrangements are in force with respect to the making of the contribution.

More information

A request for assessment by the Department of Planning and Environment of the amount of the contribution that is required under this condition can be made through the NSW Planning Portal (<http://www.planningportal.nsw.gov.au/special-infrastructure-contributions-online-service>). Please refer enquiries to SIContributions@planning.nsw.gov.au.

Reason : To ensure relevant contributions and levied and paid prior to release of a Construction Certificate.

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

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

Drainage Works

As security against any damage or failure to complete the construction of stormwater drainage works required as part of this consent a bond of \$300,000.

Crossing / Kerb & Gutter / Footpath Works

As security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent a bond of \$50,000.

Security Bond

As security against damage to Council's roads fronting the site caused by the transport and disposal of materials and equipment to and from the site a bond of \$100,000.

Reason: Protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

11. **On Slab Landscape Planters**

a) details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided. Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections. The following soil depths are required to support landscaping:

- 800mm for small trees,
- 500-600mm for shrubs,
- 300-450mm for groundcovers and grasses.

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

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

12. On-Site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by hymas & hymas, drawing number 22L7_DA_C000 rev 06 dated 01.11.2023, 22L17_DA_C010 rev 02 dated 14.09.2023, 22L17_DA_C100 rev 05 dated 14.09.2023, 22L17_DA_C101 rev 06 dated 01.11.2023, 22L17_DA_C102 rev 04 dated 14.09.2023, 22L17_DA_C103 rev 05 dated 14.09.2023, 22L17_DA_C200 rev 05 dated 14.09.2023, 22L17_DA_C201 rev 03 dated 14.09.2023, 22L17_DA_C202 rev 05 dated 01.11.2023, 22L17_DA_C203 rev 02 dated 01.11.2023, 22L17_DA_C204 rev 04 dated 14.09.2023, 22L17_DA_C205, rev 02 dated 01.11.2023, 22L17_DA_C210 rev 03 dated 01.11.2023, 22L17_DA_C211 rev 02 dated 01.11.2023, 22L17_DA_C212 rev 01 dated 01.11.2023, 22L17_DA_C250 rev 04 dated 14.09.2023, 22L17_DA_C251 rev 4 dated 14.09.2023, 22L17_DA_SE01 rev 04 dated 14.09.2023, 22L17_DA_SE02 rev 03 dated 14.09.2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. All overland stormwater overflow from the on-site detention system is to be a minimum of 300 mm below habitable floor levels

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

13. 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.

14. 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. Stormwater shall be conveyed from the site to Council's drainage easement.

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 of stormwater management arising from the development.

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

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

16. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing a maximum of 5 metres wide in accordance with Northern Beaches Council Standard Drawing A4 3330/3 NL 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.

17. **Off Street Parking Design**

The Applicant shall submit a design for the parking facility in accordance with the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

18. **Soil and Water Management Plan**

A Soil and Water Management Plan (SWMP) shall be prepared by a suitably qualified Civil Engineer, who has membership to the Engineers Australia, National Engineers Register and implemented onsite prior to commencement. The SWMP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004) and Council's Water Management for Development Policy.

The SWMP must include the following as a minimum:-

- Site boundaries and contours;
- Vehicle access points, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Location of all drains, pits, downpipes and waterways on and nearby the site;
- Planned stages of excavation, site disturbance and building;
- Stormwater management and discharge points;
- Integration with onsite detention/infiltration;

- Sediment control basin locations and volume (if proposed);
- Proposed erosion and sediment controls and their locations;
- Location of washdown and stockpile areas including covering materials and methods;
- Vegetation management including removal and revegetation;
- A schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.
- Inspection and maintenance program;
- North point and scale.

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

Reason: To promote the long-term sustainability of ecosystem functions.

19. **Detailed Design of Stormwater Treatment Measures - Major**

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the plans of the set 22L17_DA rev 04 (HenryHymas).

The certificate shall be submitted to the Certifier prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment.

20. **Affordable Housing - Fittings and Finishes**

The affordable housing dwellings identified in Condition 4 must have internal fittings, finishes and services to the same standard as the other dwellings within the development.

Details of all internal fittings, finishes and services must be submitted to Council, and written confirmation received from Council to the effect that it is satisfied that the proposed internal fittings, finishes and services of the affordable housing dwelling(s) are at the same standard as other dwellings within the development prior to the issue of a Construction Certificate.

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

Reason: To ensure a high standard of affordable housing.

21. **Affordable Housing Contribution - Payment of money in lieu of floor space**

In accordance with the Northern Beaches Affordable Housing Contributions Scheme and Clause 6.11 of *Warringah Local Environmental Plan 2011*, the applicant shall make a monetary contribution to Council for the purpose of providing Affordable Housing.

Monetary contributions are to be paid to Council by unendorsed bank cheque prior to the issue of a Construction Certificate. The procedure for making payment is on Council's website.

The contribution is **\$486,199.90** based on the in lieu monetary contribution rate of \$13,069.89/sqm multiplied by 37.2sqm [10% of 4332 sqm of total residential gross floor area minus 396sqm (dwellings to be dedicated)]

The contribution amount quoted in this condition is based on contribution rates at the time of determination. If the contribution is paid after the indexation period in which the consent is granted, being March 2023 to February 2024, the contribution amount will be adjusted by

reference to the Northern Beaches LGA median sales price - strata ('MDP') (as detailed within the NSW Government Family and Community Services Rent and Sales Report) using the following formula:

Contribution at Time of Payment = C x (MDP2 / MDP1), where:

C is the original contribution amount as shown above;

- (i)
- (ii) MDP2 is the MDP as detailed in the most recently published issue of the NSW Government Family and Community Services Rent and Sales Report as at the time of payment; and
- (iii) MDP1 is the MDP contained in the September 2022 quarter of the NSW Family and Community Services Rent and Sales Report.

In the event that the NSW Government Family and Community Services Rent and Sales Report is no longer in publication as at the date of payment, the contribution amount is to be indexed having regard to an equivalent index as determined by Council.

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

Reason: To ensure affordable housing can be provided.

22. **Agreement to Transfer Affordable Housing Dwellings**

The applicant must enter into a Deed with Council providing for the transfer of title of the affordable housing dwellings identified in Condition 4 to Council, at no cost to Council, prior to the issue of a Construction Certificate.

The Deed is to be generally in accordance with the Housing Transfer Deed template available at Council.

Reason: To ensure the affordable housing is dedicated to Council.

23. **Construction Traffic Management Plan**

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

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

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles,

- including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Specify that, due to the proximity of the site adjacent to Forest High School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays)
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

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

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

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

24. **On Street Loading Zone - Waste and Service Vehicle Parking**

Access to the on-street indented loading bay area shall be designed for safe forward in and forward out access of Council's 10.5m waste vehicle, as a minimum requirement. Swept path diagrams shall be provided to demonstrate the above. Detailed design plans must be provided for Section 138 Roads Act and Council Traffic Committee's approval including dimensioned details of the parking indent, kerb alignments on both sides of the road, line marking, existing parking restriction signs, proposed Loading Zone signs, footpath, driveway, drainage pits, power poles, trees and any other kerbside structures. A copy of the Roads Act consent and the Traffic Committee approval for the Loading Zone must be provided to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: To ensure adequate parking provision for service vehicle and waste collection.

25. **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.

26. **Submission of Engineering Plans**

Civil Engineering plans for the design of the following must be lodged with Council's Development Engineering section for approval:

- Footpath on Bluegum Crescent
- Waste Collection parking indent

These are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and or Council's Minor Works Policy.

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

Section 138 and/or 139 applications are to be submitted to Council for Local Traffic Committee approval.

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

27. **Amendments to the approved plans**

The north-facing living room windows of apartments A105 and A205 shall be amended to incorporate either:

- i. external full-height louvre privacy screens covering a minimum of half the glazing width; or
- ii. external louvre privacy screens covering the full width of the glazing up to a minimum height of 1.5m above the FFL; or
- iii. frosted/translucent glazing up to a minimum height of 1.5m above the FFL.

Any privacy screening shall be fixed and angled towards the north-east with a maximum

spacing of 100mm, and shall be constructed of materials that complement the finishes of the building.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

28. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

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

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

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 ensure no substance other than rainwater enters the stormwater system and waterways.

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

The Building Code of Australia fire safety requirements for the building as detailed and recommended in the BCA Assessment Report prepared by Jensen Hughes, dated 6/2/2023, Project. No. 116826, Rev 01, including any Performance Solutions is to be considered, as part of the assessment for any Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of a Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

31. Access and Facilities for Persons with Disabilities

Access and facilities to and within the building are to be provided as required for Persons with a Disability in accordance with the Building Code of Australia and AS1428.. In this regard the recommendations contained in the Access Assessment Report prepared by Jensen Hughes, Project No. 116826, Rev r2 dated 7/2/2023 are to be taken into consideration as part of the assessment of the Construction Certificate, Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

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

32. 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 Council's stormwater system on Bluegum Crescent which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information: 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.

33. Vehicle Driveway Gradients

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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

Reason: To ensure suitable vehicular access to private property.

34. Tanking of Basement Level

The basement area is to be permanently tanked. The Applicant is to submit structural details of the tanking, prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for

and obtain a bore license from the NSW Office of Environment and Heritage. The bore license must be obtained prior to commencement of dewatering works. All requirements of the Water NSW are to be complied with and a copy of the approval must be submitted to the Certifier.

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

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

35. **Utilities Services**

Prior to the issue of the Construction Certificate, written evidence of the following service provider requirements must be provided to the Principal Certifier:

- a) a letter from Ausgrid demonstrating that satisfactory arrangements can be made for the installation and supply of electricity,
- b) a response from Sydney Water as to whether the proposed works subject to this consent would affect any Sydney Water infrastructure, and whether further requirements need to be met, and
- c) other relevant utilities or services - that the development as proposed to be carried out is satisfactory to those other service providers, or if it is not, the changes that are required to make the development satisfactory to them.

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

Reason: To ensure relevant utility and service providers' requirements are provided to the Principal Certifier.

36. **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 Certifier prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

37. **Shoring of Council's Road Reserve (Temporary road anchors)**

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Council under Section 138 of the Roads Act 1993 is required if

temporary ground anchors are to be used within Council's road reserve. The Owner's approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

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

38. Stormwater Drainage Application

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the re-alignment of Council's stormwater drainage system through development site which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at www.northernbeaches.nsw.gov.au > Council Forms > Stormwater Drainage Application Form.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development.

39. Pre-Construction Stormwater Assets Dilapidation Report

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be 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 Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

40. Pre-commencement Dilapidation Report

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public property and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

The pre-construction / demolition dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifier prior to the issue of the any Construction Certificate and the commencement of any works including demolition.

Reason: Protection of Council's infrastructure during construction.

41. Car Wash Bay

Wastewater and rainwater run-off from vehicle, machinery and equipment wash bays can pose a significant threat to the health of natural waterways if they are discharged into the stormwater system.

No wash water containing any cleaning agents or toxic pollutants should be discharged directly to the stormwater system, and rainwater should be restricted from flowing through the wash bay and into a stormwater drain.

Carwash bay shall not be connected to the stormwater system, detention system or drained directly to the environment.

Vehicle, machinery or equipment wash bays shall be designed to exclude rainwater, and to legally dispose of all wastewaters.

If the wastewater is disposed to sewer a trade water agreement shall be in place with Sydney Water.

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

Reason: To protect the downstream environment.

42. **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.

43. **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.

44. **Internalised Services**

Service ducts, drainage, plumbing, pipes, cables and conduits are to be internalised and must not be visible from the public domain. All service, communication and electricity connections must be provided underground.

Provision must also be made for any future ventilation or exhaust system required for the retail tenancies throughout the development.

Details demonstrating compliance with this requirement must be provided to the certifying authority prior to the issuance of the construction certificate.

Reason: To remove visual clutter and ensure a high-quality finish to the development.

45. **Boundary Fences**

All side and rear boundary fences shall:

- a. Not exceed 1.8m in height as measured from the low side of the fence; and
- b. Be constructed of materials that complement existing fences within the surrounding locality.

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

Reason: To ensure compliance with the applicable controls.

46. **Sydney Water "Tap In"**

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

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

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

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

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

47. **Utility Services**

Prior to the issue of the Construction Certificate, the Applicant is to obtain the following:

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

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

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

48. **Underground Services**

All services connecting to/servicing the development are to be provided underground (both within the site and within the adjacent road reserve).

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To minimise visual clutter associated with services and infrastructure.

49. **Internalised Services**

Service ducts, drainage, plumbing, pipes, cables and conduits are to be internalised and must not be visible from the public domain. All service, communication and electricity connections must be provided underground.

Provision must also be made for any future ventilation or exhaust system required for the retail

tenancies throughout the development.

Details demonstrating compliance with this requirement must be provided to the certifying authority prior to the issuance of the construction certificate.

Reason: To remove visual clutter and ensure a high-quality finish to the development.

50. Waste and Recycling Requirements

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

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

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

51. Waste Management Plan

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

52. Project Arborist

a) 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 AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

b) the Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:

i) tree protection measures and works under section 1.4.3, 1.4.4, 1.5 Details which require further information, 2.2 Specific tree management recommendations, 2.3 General tree protection requirements part I) Hold points, and Appendix F Tree Protection Area Plan.

c) All tree protection measures specified must:

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

d) the Project Arborist shall provide certification to the Certifier that all tree protection measures under AS 4970-2009 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.

53. Tree Removal Within the Property

a) this consent approves the removal of existing prescribed trees on the subject site as listed below:

i) tree 11 - *Angophora costata*, 16 - *Melaleuca quinquenervia*, 20 - *Angophora costata*, 22 - *Angophora costata*, 23 - *Eucalyptus piperita*, 27 - *Melia azedarach*, 31 - *Viburnum odoratissimum*, 32 - *Angophora costata*, 40 - *Melaleuca styphelioides*, 47 - *Liriodendron tulipifera*, 48 - *Liriodendron tulipifera*, 50 - *Viburnum odoratissimum*, 52 - *Agonis flexuosa*, 54 - *Eucalyptus piperita*, 59 - *Pittosporum undulatum*, 63 - *Ceratopetalum gummiferum*, and 68 - *Rhododendron* sp..

b) exempt trees (9, 10, 12, 13, 14, 15, 17, 18, 19, 21, 24, 25, 26, 28, 29, 30, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 49, 51, 53, 55, 56, 57, 58, 60, 61, 62, 64, 65, 66, and 67) can be managed or removed at the discretion of the applicant.

c) 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.

54. Tree Removal Within the Road Reserve

a) this consent approves the removal of existing trees within the road reserve as listed below:

i) tree 1 - *Quercus palustris*.

b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

c) removal of the approved tree/s by the applicant in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services business unit prior to removal.

Reason: Public liability.

55. Utilities Services

Prior to the commencement of demolition works, written evidence of the following service provider requirements must be provided to the Principal Certifier:

- a) a letter from Ausgrid demonstrating that satisfactory arrangements can be made for the installation and supply of electricity,
- b) a response from Sydney Water as to whether the proposed works subject to this consent would affect any Sydney Water infrastructure, and whether further requirements need to be met, and
- c) other relevant utilities or services - that the development as proposed to be carried out is satisfactory to those other service providers, or if it is not, the changes that are required to make the development satisfactory to them.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of demolition works.

Reason: To ensure relevant utility and service providers' requirements are provided to the Principal Certifier.

56. **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 and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

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

57. **Road Occupancy Licence**

Prior to commencement of the associated works, the applicant shall obtain a Road Occupancy License from Transport Management Centre for any works that may impact on traffic flows on Frenchs Forest Road West or on approach to the signalised intersection of Bluegum Crescent with Frenchs Forest Road West.

Reason: Requirement of TMC for any works that impact on traffic flow.

58. **Demolition Traffic Management Plan**

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

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

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Specify that, due to the proximity of the site adjacent to Forest High School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).
- Include a Traffic Control Plan prepared by an TfNSW accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work

Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.

- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

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

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

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

59. **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:

1. 7 Bluegum Crescent, Frenchs Forest
2. 22 Sylvia Place, Frenchs Forest
3. 23 Sylvia Place, Frenchs Forest
4. 24 Sylvia Place, Frenchs Forest
5. 25 Sylvia Place, Frenchs Forest
6. 26 Sylvia Place, 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 rising from the works.

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

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

60. **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

61. **Protection of Existing Street Trees**

a) all existing street trees in the vicinity of the works and not approved for removal shall be retained during all construction stages.

b) 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.

62. **Tree and Vegetation Protection**

existing trees and vegetation shall be retained and protected, including:

- i) all trees within the site not approved for removal,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve not approved for removal.

b) tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS 4970-2009 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 AS 4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS 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 AS 4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: be in place before work commences on the site, be maintained in good condition during the construction period, and remain in place for the duration of the construction works.

c) the Principal Certifier must ensure that:

- i) If activated, the arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as complaint to AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

63. 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/Project Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:
 - i) a general decline in health and vigour,
 - ii) damaged, crushed or dying roots due to poor pruning techniques,
 - iii) more than 10% loss or dieback of roots, branches and foliage,
 - iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
 - v) yellowing of foliage or a thinning of the canopy untypical of its species,
 - vi) an increase in the amount of deadwood not associated with normal growth,
 - vii) an increase in kino or gum exudation,
 - viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
 - ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

b) any mitigating measures and recommendations required by the Arborist/Project Arborist are to be implemented.

c) 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.

64. 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.

65. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

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

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

Reason: Protection of the receiving environment.

66. **Implementation of Demolition Traffic Management Plan**

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

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

67. **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.

68. **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.

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

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

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

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

70. **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.

71. **Staff and Contractor Parking**

duration of the project. All Staff and Contractors are to use the basement parking once available. All necessary facilities are to be provided to accommodate this requirement including lighting in the basement, security cameras, etc.

Reason: To ensure minimum impact of construction activity on local parking amenity.

72. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

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

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

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

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

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

73. **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.

74. **Kerb and Gutter Construction**

The Applicant is to construct kerb and gutter and associated works along the entire frontage of

the site in accordance with Northern Beaches Council Drawing No. A4 2276/A. Prior to the pouring of concrete, the works are to be inspected by Council and an approval issued.

The approval is to be submitted to the Principal Certifier.

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

75. 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.

76. Waste/Recycling Requirements (Waste Plan Submitted)

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

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

77. Waste/Recycling Requirements (Materials)

During demolition and/or construction the following materials are to be separated for recycling: timber, bricks, tiles, plasterboard, metal, concrete, and evidence of disposal for recycling is to be retained on site.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

78. Landscape Completion

a) landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawing sheets LP-04, LP-05, LP-06, LP-07, LP-08, LP-13 by Concept dated 18/09/23), and inclusive of the following conditions:

- i) landscape works are to be contained within the legal property boundaries,
- ii) planting shall be installed as indicated on the approved Landscape Plan(s) unless otherwise imposed by any conditions,
- iii) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, 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,
- iv) all tree planting in deep soil along the southern boundary shall be located 2.5 metres from the basement structure and 1 metre from the boundary, all other tree planting in deep soil shall be located at least 3.0 metres from the basement structure/building or more and at least 1.5 metres from common boundaries,
- v) mass planting shall be installed in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch.

b) 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.

79. **Condition of Retained Vegetation**

a) prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

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

Reason: Tree and vegetation protection.

80. **Post- Construction Stormwater Assets Dilapidation Report (Council stormwater assets)**

The Applicant shall submit a post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/preparingdilapidationsurveyforcouncilstormwaterassets.pdf>

The post-construction / demolition dilapidation report must be submitted to Council for review and approval. Any damage to Council's stormwater infrastructure is to be rectified prior to the release of any Drainage security bonds. Council's acceptance of the Dilapidation Survey is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure.

81. **Certification of Civil Works and Works as Executed Data on Council Land**

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

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

82. **Certification of Civil Works and Works as Executed Data in accordance with Road Act Approval**

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

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

83. **Certification of Council Drainage Works and Works as Executed Data in accordance with Local Government S68 Approval**

The Applicant shall submit certification by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) that the completed works have been constructed in accordance with this consent and the approved Section 68 approved plans. Works as Executed data (details overdrawn on a copy of the approved drainage plan) certified by a registered surveyor in relation to boundaries and/or relevant easements prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Stormwater Assets' within the subject site, shall be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

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

84. **Certification of Council Drainage Works and Works as Executed Data within Private Land**

The Applicant shall submit certification by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) that the completed works have been constructed in accordance with this consent and the approved Section 68 approved plans. Works as Executed data (details overdrawn on a copy of the approved drainage plan) certified by a registered surveyor in relation to boundaries and/or relevant easements prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Stormwater Assets' within the subject site, shall be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

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

85. **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.

86. **Certification for the Installation of Stormwater Treatment Measures**

A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the plans prepared by Henry & Hymas. The certificate must confirm that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment. Vegetated measures must exhibit an 80 percent survival rate of plantings.

The certificate shall be submitted to the Principal Certifier prior to the release of an Occupation Certificate.

Reason: Protection of the receiving environment.

87. **Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures, restricting any alteration to the measures.

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

88. **Stormwater Treatment Measures Operation and Maintenance Plan**

An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment measures remain effective.

The Plan must be attached to the Positive Covenant (and the community or strata management statement if applicable) and contain the following:

1. Detail on the stormwater treatment measures:
 - a) Work as executed drawings
 - b) Intent of the stormwater treatment measures including modelled pollutant removal rates
 - c) Site detail showing catchment for each device
 - d) Vegetation species list associated with each type of vegetated stormwater treatment measure
 - e) Impervious area restrictions to maintain the water balance for the site
 - f) Funding arrangements for the maintenance of all stormwater treatment measures
 - g) Identification of maintenance and management responsibilities
 - h) Maintenance and emergency contact information
2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure:
 - a) Activity description, and duration and frequency of visits

Additionally for vegetated devices:

 - b) Monitoring and assessment to achieve an 80 percent survival rate for plantings
 - c) Management of weeds, pests and erosion, with weed and sediment cover limited to a maximum of 5 percent of the total area of the stormwater treatment measure
3. Maintenance schedule and procedure - ongoing
 - a) Activity description, and duration and frequency of visits

- b) Routine maintenance requirements
- c) Work Health and Safety requirements
- d) Waste management and disposal
- e) Traffic control (if required)
- f) Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures (please note that a DA may be required if an alternative stormwater treatment measure is proposed)
- g) Requirements for inspection and maintenance records, noting that these records are required to be maintained and made available to Council upon request.

Details demonstrating compliance shall be submitted to the Principal Certifier prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

89. **Works as Executed Drawings - Stormwater Treatment Measures**

Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifier prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

90. **Affordable Housing - Fittings and Finishes**

Prior to the issue of an Occupation Certificate, written confirmation must be received from Council to the effect that Council is satisfied that the proposed internal fittings, finishes and services are at the same standard as other dwellings within the development.

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

Reason: To ensure a high standard of affordable housing.

91. **Signage and Linemarking – External**

Any signage and line marking changes within Council's Public Domain shall be installed to Council's satisfaction in accordance with plans approved by the Local Traffic Committee prior to the issue of an Occupation Certificate.

Reason: To ensure consistent parking amenity.

92. **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.

93. **Footpath Construction**

The footpath, in accordance to Council's standard specifications, shall be constructed along the

property frontage and extending to the existing footpath on Frenchs Forest Road West to Council's satisfaction. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate. Reason: To provide pedestrian access to and from the property.

94. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

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

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

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

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

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

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

96. **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.

97. **Certification of Structures Located Adjacent to Council Pipeline or Council Easement**

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management Policy; (in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification). Any proposed landscaping within a Council easement or over a drainage system is to consist of ground cover or turf only (no trees are permitted) - Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Principal Certifier for approval prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure

98. **Positive Covenant for the Maintenance of Stormwater Pump-out Facilities**

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

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

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

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

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

99. **Retaining wall**

The retaining wall works shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Public and Private Safety

100. **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.

101. **Certification of Off Street Parking Works**

The Applicant shall submit a certificate from a suitably qualified person certifying that the parking facility was constructed in accordance within this development consent and the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

102. **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.

103. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**

The units within the development are to be numbered in accordance with NSW Address Policy and User Manual.

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

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

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

Details are to be submitted with any Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

104. **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.

105. **Car Share Operator**

Written evidence demonstrating that offers of car share spaces have been made to providers together with the outcome of the offers or a letter of commitment to the service must be submitted to Council. Letters of commitment must demonstrate the operator's intentions and methods of management of the car share spaces.

Reason: To ensure car share places will operate in accordance with the determination of Council and approved plans

106. **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.

107. **Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

108. **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.

109. **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

110. **Landscape Maintenance**

a) if any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components.

b) 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.

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

d) a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

e) the approved landscape planted areas, whether containing lawn, gardens or planters shall in

perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

111. Maintenance of Stormwater Treatment Measures - Major

Stormwater treatment measures must be maintained at all times in accordance with the Stormwater Treatment Measure Operation and Maintenance Plan, manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Vegetated stormwater treatment measures must maintain an 80 percent survival rate of plantings and limit weed cover to no more than 10 percent of the total area of the stormwater treatment measure.

Where replacement cartridges or other necessary components for the system become unavailable, an alternative system is required to be retrofitted into the development to achieve an equivalent pollutant reduction outcome. Evidence supporting the replacement must be retained on site and made available to Council as required.

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

Reason: Protection of the receiving environment.

112. Landscaping adjoining vehicular access

The applicant must ensure that the planting chosen for any land immediately adjacent to the driveway and adjacent to any driveway intersections must not exceed a height of 1m

Reason: To maintain unobstructed sight distance for motorists.

113. 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.

114. Mechanical Plant

Any mechanical plant equipment shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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

115. Car Parking Allocation

The development is to maintain the following parking allocation for the life of the development:

- a. 45 x residential spaces, with a minimum of 1 space per unit, and inclusive of 7 x accessible parking spaces and 2 x electric vehicle spaces,
- b. 5 x visitor spaces,
- c. 6 x car share spaces,

- d. 1 x car wash bay, and
- e. 22 x motorcycle bays.

All spaces must be line-marked and identified accordingly.

Manoeuvring areas must be kept clear of obstructions at all times. Vehicles must not be required to queue on public roads at any time.

Reason: To ensure the appropriate management of parking on site.

116. Liveable Housing Units

The proposal must maintain 10 apartments incorporating the Livable Housing Guideline's silver level universal design features in accordance with the Class C requirements of AS4299.

Reason: To maintain the appropriate quantity of liveable and adaptable units over the life of the development.

117. Resident Parking Permits

Any owners and/or occupiers of the subject site are not eligible for resident parking permits in any permit parking scheme that might be introduced in the Frenchs Forest Area. This condition is to be provided on the Property Title.

Reason: To ensure availability of on-street parking and that residents are aware that their ineligibility for permits

118. Car Share Vehicle Parking

- (a) A minimum of 6 car parking spaces for the exclusive use of car share scheme vehicles are to be provided.
- (b) The spaces must be retained as common property of the Owners Corporation of the site, and not sold or leased to an individual owner/occupier at any time.
- (c) The spaces must be made available to car share operators without a fee or charge.
- (d) The spaces must be sign posted for use only by car share vehicles and well lit.
- (e) The spaces must be publicly accessible at all times.
- (f) The car share spaces are to be available at the same time that the car park commences operation.

Reason: to ensure ongoing adequate provision of car share vehicle parking

BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

119. Easement Creation

The Applicant shall create an easement for drainage (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s).

The Applicant shall create an easement for services (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all utility services are located within the appropriate easement(s).

The Applicant shall create an easement to drain water in favour of Council over the channel/floodway to encompass the 1 in 100 year recurrence frequency predicted water

surface level, including a 500mm freeboard and a 500mm minimum margin in plan. The easements are to be detailed on the final plan of subdivision.

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

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

120. **Provision of Services for Subdivision**

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision.

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

Reason: To ensure that utility services have been provided to the newly created lots.

121. **Sydney Water Compliance Certification**

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

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

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

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

122. **Easement for Drainage**

The Applicant shall create an easement for drainage (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s).

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

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

123. **Easement to Drain Water - Channel/Floodways**

The Applicant shall create an easement to drain water in favour of Council over the channel/floodway to encompass the 1 in 100 year recurrence frequency predicted water surface level, including a 500mm freeboard and a 500mm minimum margin in plan. The easements are to be detailed on the final plan of subdivision.

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

Reason: To identify flood affected areas on the property title.

124. **Easement for Services**

The Applicant shall create an easement for services (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all utility services are located within the appropriate easement(s).

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

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

125. **Release of Subdivision Certificate**

The final plan of subdivision will not be issued by Council until the development has been completed in accordance with terms and conditions of the development consent.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

126. **Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

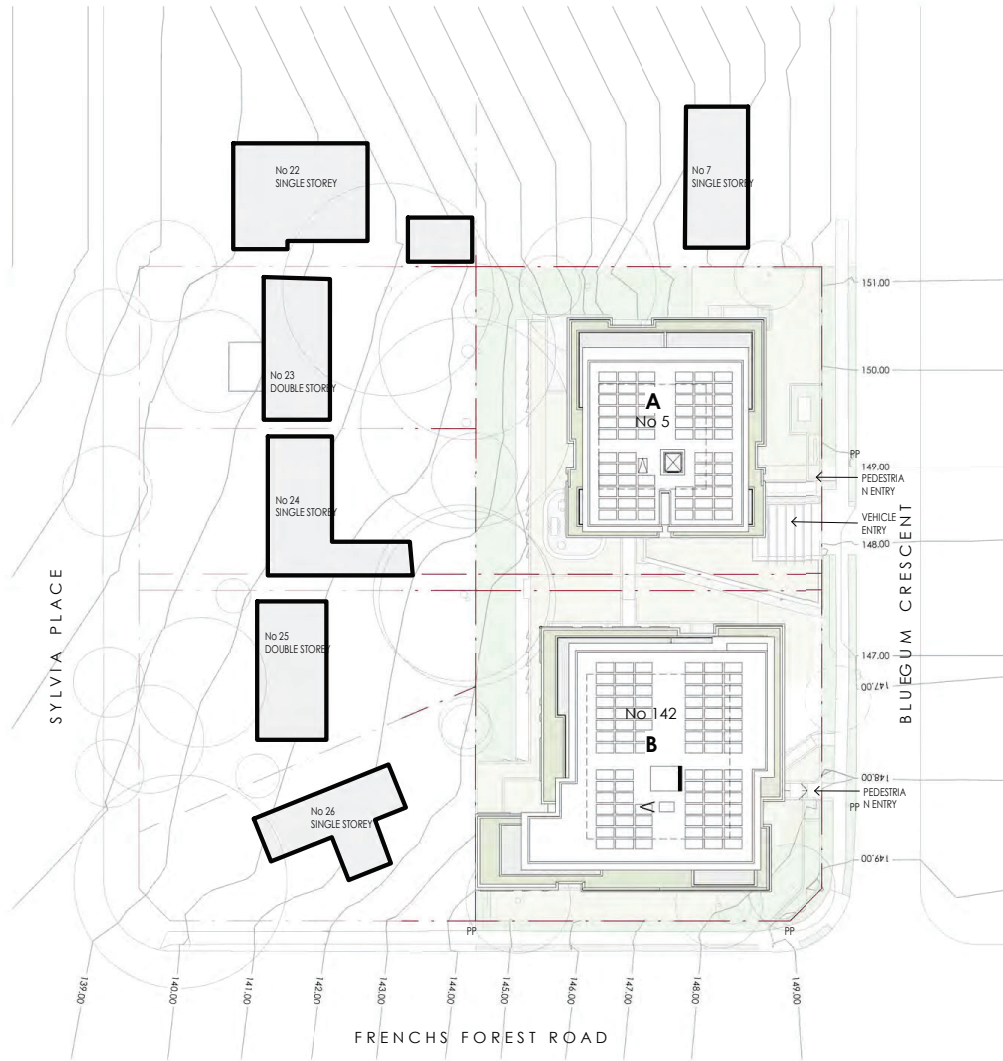
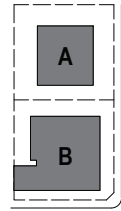
Reason: Statutory requirement of the Conveyancing Act 1919.

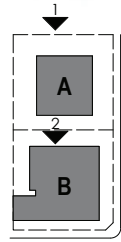
127. **Title Encumbrances**

The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

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

Reason: To ensure proper management of land.





WINDOWS

- PREFINISHED ALUMINIUM FRAMES - DARK BRONZE
- GLAZING PANELS - CLEAR

EXTERNAL DOORS

- ANODISED ALUMINIUM FRAMES - DARK BRONZE

BALUSTRADES

- B1 GLASS BALUSTRADE - CLEAR
- PREFINISHED METAL HANDRAIL

WALLS AND CLADDING

- RF1 CONCRETE RENDER / OFF FORM CONCRETE
- SILICATE STAIN - LIGHT GREY
- RF2 CONCRETE RENDER / OFF FORM CONCRETE
- SILICATE STAIN - WHITE
- CL1 TIMBER EFFECT CLADDING
- FB1 FACE BRICKWORK - LIGHT BROWN MIX
- BL1 STONE EFFECT BLOCK

SCREENS & MOODS

- SC1 ALUMINIUM BATTEN TYPE SCREEN - TIMBER EFFECT
- SC3 PREFINISHED PERFORATED METAL - BRONZE
- HD PREFINISHED METAL HOODS - DARK BRONZE
- MB1 PREFINISHED METAL BLADES - DARK BRONZE

METAL WORK / TRIMS

- PM1 PREFINISHED METAL - DARK BRONZE

1 BUILDING A - NORTH ELEVATION
1 : 250



2 BUILDING B - NORTH ELEVATION
1 : 250



3 BUILDING A - SOUTH ELEVATION
1 : 250

- WINDOWS**
- PREFINISHED ALUMINIUM FRAMES - DARK BRONZE
 - GLAZING PANELS - CLEAR
- EXTERNAL DOORS**
- ANODISED ALUMINIUM FRAMES - DARK BRONZE
- BALUSTRADES**
- B1 GLASS BALUSTRADE - CLEAR
PREFINISHED METAL HANDRAIL
- WALLS AND CLADDING**
- RF1 CONCRETE RENDER / OFF FORM CONCRETE
- SILICATE STAIN - LIGHT GREY
 - RF2 CONCRETE RENDER / OFF FORM CONCRETE
- SILICATE STAIN - WHITE
 - CL1 TIMBER EFFECT CLADDING
 - FB1 FACE BRICKWORK - LIGHT BROWN MIX
 - BL1 STONE EFFECT BLOCK
- SCREENS & HOODS**
- SC1 ALUMINIUM BATTEN TYPE SCREEN - TIMBER EFFECT
 - SC3 PREFINISHED PERFORATED METAL - BRONZE
 - HD PREFINISHED METAL HOODS - DARK BRONZE
 - MB1 PREFINISHED METAL BLADES - DARK BRONZE
- METAL WORK / TRIMS**
- PM1 PREFINISHED METAL - DARK BRONZE



4 BUILDING B - SOUTH ELEVATION
1 : 250



WINDOWS

- PREFINISHED ALUMINIUM FRAMES - DARK BRONZE
- GLAZING PANELS - CLEAR

EXTERNAL DOORS

- ANODISED ALUMINIUM FRAMES - DARK BRONZE

BALUSTRADES

- B1 GLASS BALUSTRADE - CLEAR
- PREFINISHED METAL HANDRAIL

WALLS AND CLADDING

- RF1 CONCRETE RENDER / OFF FORM CONCRETE
- SLICATE STAIN - LIGHT GREY
- RF2 CONCRETE RENDER / OFF FORM CONCRETE
- SLICATE STAIN - WHITE
- CL1 TIMBER EFFECT CLADDING
- FB1 FACE BRICKWORK - LIGHT BROWN MIX
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- MB1 PREFINISHED METAL BLADES - DARK BRONZE

METAL WORK / TRIMS

- PM1 PREFINISHED METAL - DARK BRONZE

DA3.03

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Project No. 6759

As indicated @ A3

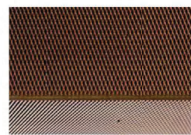
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6 BUILDING A + B - WEST ELEVATION
1:250



VENTILATED FACADE TO WESTERN WALL



SC3 PREFINISHED PERFORATED METAL SCREEN

WINDOWS

- PREFINISHED ALUMINIUM FRAMES - DARK BRONZE
- GLAZING PANELS - CLEAR

EXTERNAL DOORS

- ANODISED ALUMINIUM FRAMES - DARK BRONZE

BALUSTRADES

- B1 GLASS BALUSTRADE - CLEAR
- PREFINISHED METAL HANDRAIL

WALLS AND CLADDING

- RF1 CONCRETE RENDER / OFF FORM CONCRETE
- SILICATE STAIN - LIGHT GREY
- RF2 CONCRETE RENDER / OFF FORM CONCRETE
- SILICATE STAIN - WHITE
- CL1 TIMBER EFFECT CLADDING
- FB1 FACE BRICKWORK - LIGHT BROWN MIX
- BL1 STONE EFFECT BLOCK

SCREENS & HOODS

- SC1 ALUMINIUM BATTEN TYPE SCREEN - TIMBER EFFECT
- SC3 PREFINISHED PERFORATED METAL - BRONZE
- HD PREFINISHED METAL HOODS - DARK BRONZE
- MB1 PREFINISHED METAL BLADES - DARK BRONZE

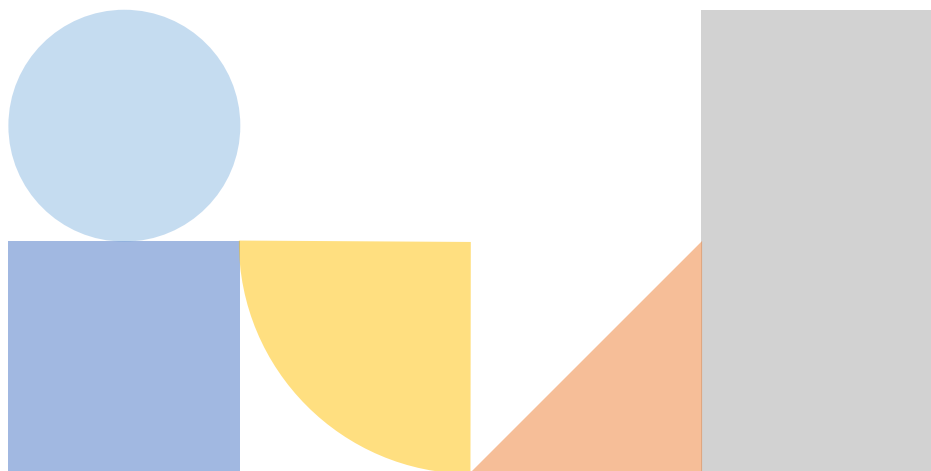
METAL WORK / TRIMS

- PM1 PREFINISHED METAL - DARK BRONZE



**No. 142 Frenchs Forest Road & 1, 3 & 5 Bluegum
Crescent, Frenchs Forest (DA2023/0285)**

**Updated Clause 4.6 Variation Request –
Building Height**



Clause 4.6 Variation Statement – Maximum Height (Clause 4.3)

1. Height of Buildings standard

Clause 4.3 of Warringah Local Environmental Plan 2011 (WLEP) relates to the maximum height requirements and refers to the Height of Buildings Map. Building height is defined as:

building height (or height of building) means—

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

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The relevant map (HOB_008) indicates that the maximum building height permitted at the subject site is 13m for the allotments known as Nos. 3 and 5 Bluegum Crescent and 17.5m for the allotments known as Nos. 142 Frenchs Forest Road West and 1 Bluegum Crescent.

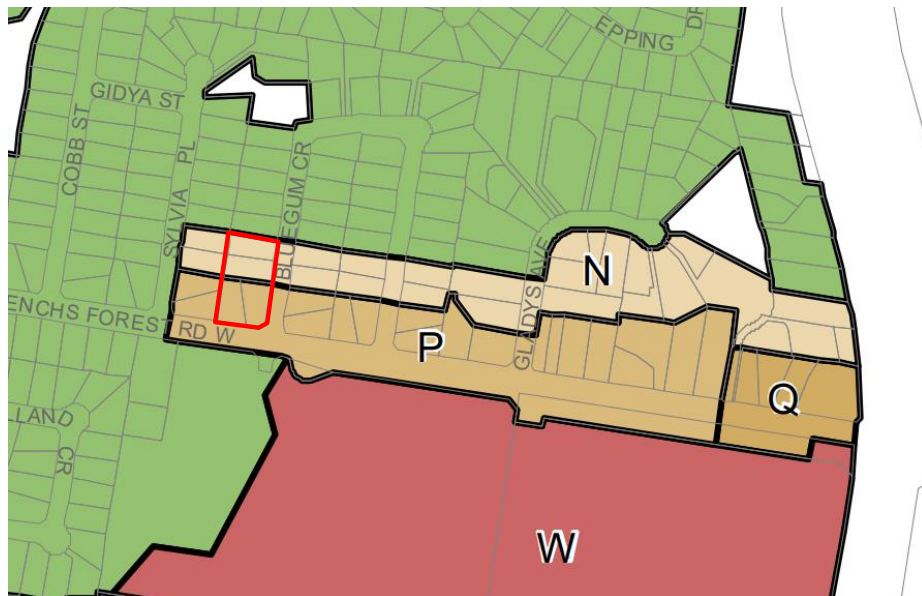


Figure 1 Extract from Height of Buildings Map [N=13m, P=17.5m]

The maximum height control is a “development standard” to which exceptions can be granted pursuant to clause 4.6 of the LEP.

2. Proposed variation to height of buildings development standard

The architectural plans indicate that the proposed development has a maximum height of 16m to the lift overrun of the northern building (Building A), in accordance with the definition of height under WLEP 2011 where the 13m standard applies. To the southern building (Building B), the architectural plans indicate that the proposed development originally had a maximum height breach of 20.26m to the uppermost edge, which has been reduced to 19.85m, in accordance with the definition of height under WLEP 2011, where the 17.5m standard applies. There are additional components, due to the site topography, that exceeded the building height and will continue to do so but have been reduced as part of the amended plans as follows:

- **Building A (13m standard):**
 - Lift overrun reduced from 16.00m (3m over) to 15.55m (2.55m over);
 - Uppermost edge of 15.85m reduced to 15.75m – breach of 2.85m or 21.9% reduced to 2.75m or 21.1%;
 - Glass Balustrades opposing western boundary of 14.75m to 13.20m – breach of 1.75m or 13.4% reduced to 0.2m or 1.5% variation;
 - Planter box edges (level 4), opposing western boundary of 15.33m reduced to 13.60m – breach of 2.33m or 17.9% reduced to 0.6m or 4.6%;
- **Building B (17.5m standard):**
 - Lift Overrun of 20.1m reduced to 19.90m – breach of 2.6m or 14.85% reduced to 2.4m or 13.7%;
 - Glass Balustrades opposing western boundary of 18.42m reduced to 18.20m – breach of 0.95m or 5.2% reduced to 0.7m or 4%; and
 - Planter box edges (level 4), opposing western boundary of 18.2m reduced to 18m – breach of 0.7m or 3.8% reduced to 0.5m or 2.85%.

The proposal is therefore non-compliant with the development standard and seeks a maximum variation of 2.55m or 19.6% (originally 3m or 23%) to the lift overrun of Building A (13m standard) and 2.37m or 13.5% (originally 2.85m or 16.2%) to the uppermost edge of the Building B (17.5m standard).

Refer to the height plane diagram at **Figure 2** and a comparison of existing and proposed sections **Figures 3- 8** below which illustrate the improvements achieved to the building height and massing following DSAP and Council officer input.

For the most part the non-compliances are limited to the centre of the site away from the adjoining residential boundaries, delivering some improvements to building massing and amenity.

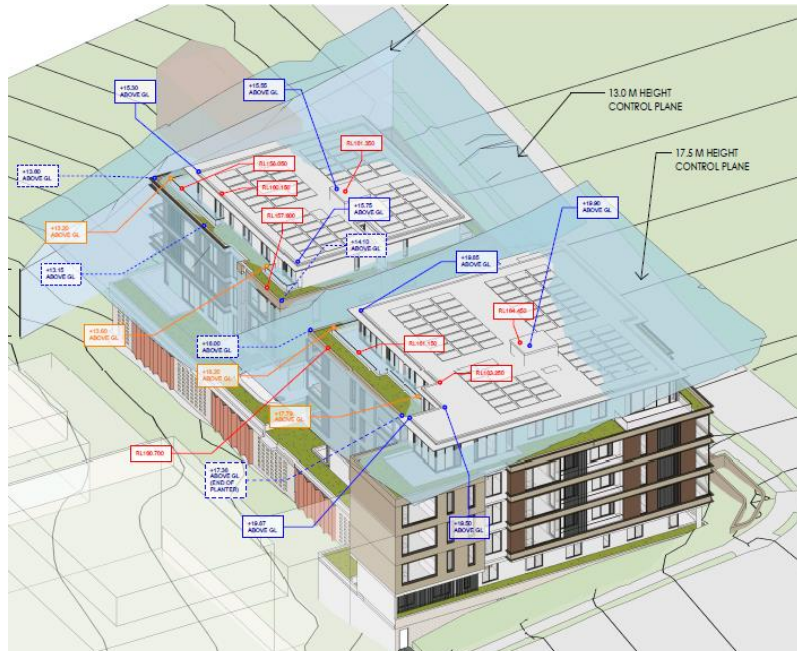


Figure 2 Height Blanket Diagram (updated September 2023)

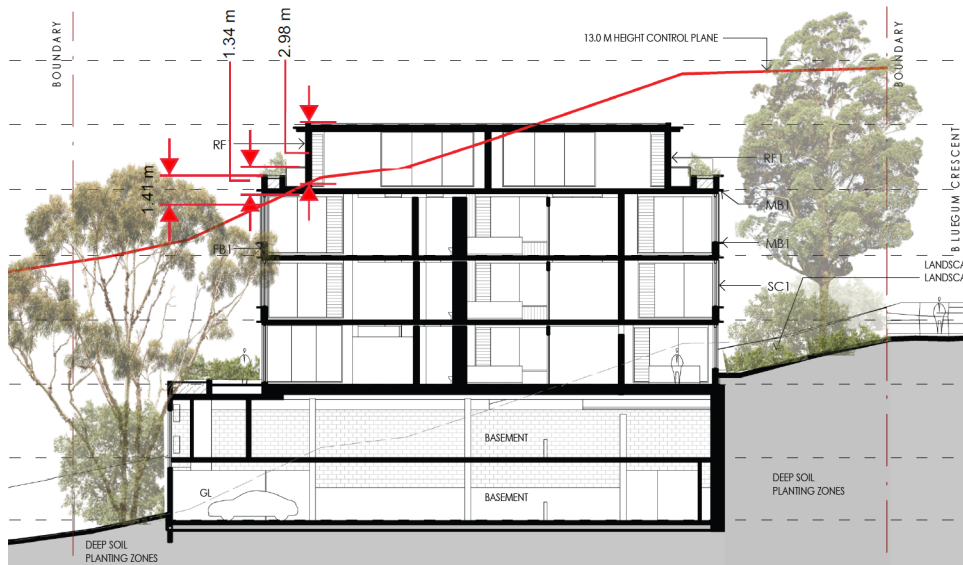


Figure 3 Section illustrating maximum height non-compliance Building A (east-west section) - previous.

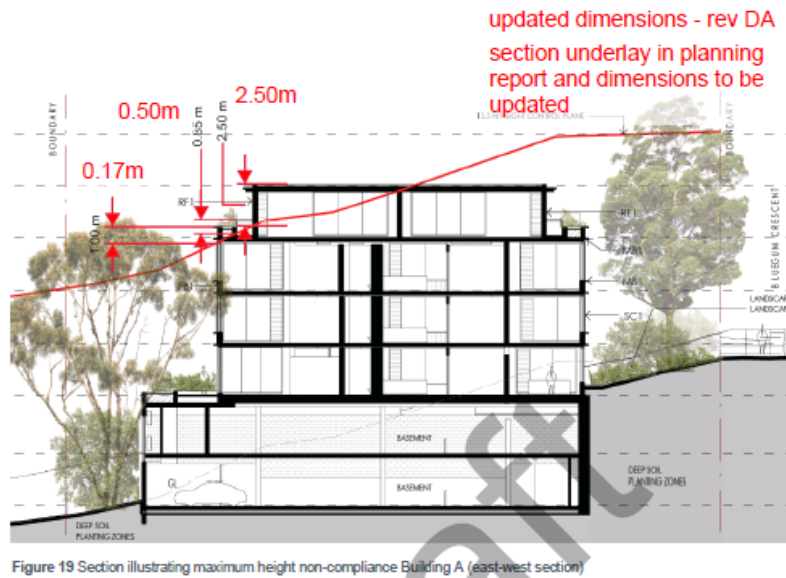


Figure 4 Section illustrating maximum height non-compliance Building A (east-west section) - amended.



Figure 5 Section illustrating maximum height non-compliance Building B (east-west section) – previous.



Figure 20 Section illustrating maximum height non-compliance Building B (east-west section)

Figure 6 Section illustrating maximum height non-compliance Building B (east-west section) – amended.



Figure 7 Section illustrating height non-compliances of both buildings (north-south section) – previous.

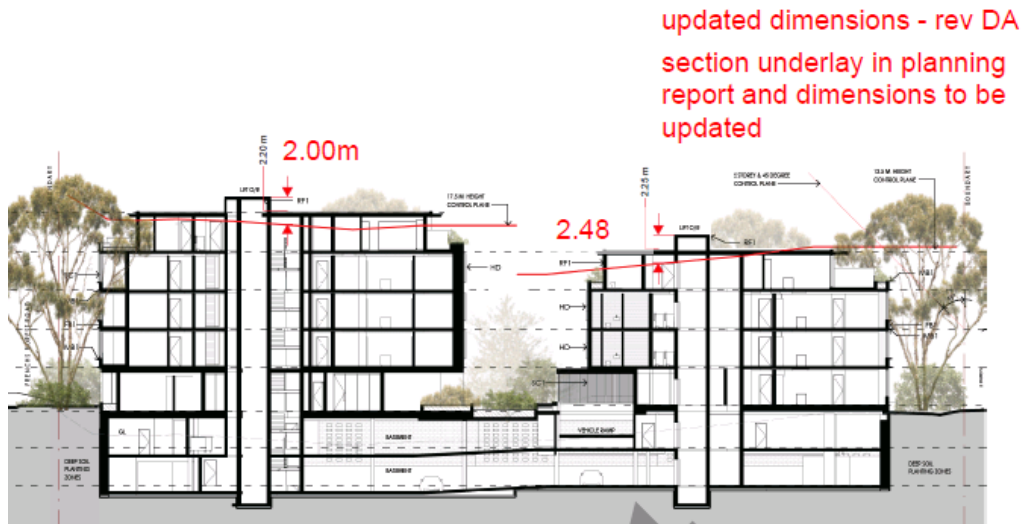


Figure 8 Section illustrating height non-compliances of both buildings (north-south section) - amended.

3. Clause 4.6 to WLEP 2011

The objectives and provisions of clause 4.6 are as follows:

(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.*
 - (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- Note—** When this Plan was made it did not contain Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU6 Transition or Zone R5 Large Lot Residential.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
 - (8) This clause does not allow development consent to be granted for development that would contravene any of the following—*
 - (a) a development standard for complying development,*
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (ba) clause 4.4, to the extent that it applies to land identified on the Key Sites Map as Site F, Site G, Site H or Site I,*
 - (c) clause 5.4,*

(caa) clause 5.5,

(d) clause 6.7, to the extent that it applies to land identified on the Key Sites Map as Site F or Site G.

(8A) Also, this clause does not allow development consent to be granted for development that would contravene a development standard for the maximum height of a building shown on the Height of Buildings Map on land shown on the Centres Map as the Dee Why Town Centre.

(8B) Despite subclause (8A), development on Site C or Site E may exceed the maximum height of building shown on the Height of Buildings Map if the maximum height is allowable under clause 7.14.

The development standards in Clause 4.3 are not “expressly excluded” from the operation of Clause 4.6.

Objective 1(a) of Clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of Subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of Subclauses 4.6(3) & (4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of “an appropriate degree of flexibility” in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by Subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, Subclause 4.6(6).

It is hereby requested that a variation to this development standard be granted pursuant to Clause 4.6 so as to permit a maximum building height of 15.55m which equates to a numerical variation of 2.55m and a percentage variation of 19.6%, noting that the maximum height relates to the lift overrun of Building A where the 13m standard applies. The proposal also requests that a variation to the standard be granted pursuant to Clause 4.6 as to permit a maximum building height of 19.87m, which equates to a numerical variation of 2.37m and a percentage variation of 13.5%, noting that this maximum height relates to the uppermost portion of Building B where the 17.5m standard applies.

4. Compliance is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))

Of relevance to Clause 4.6(3)(a), in *Wehbe V Pittwater Council (2007) NSW LEC 827* Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

“An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”

The judgement goes on to state that:

“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the

standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
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;*
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 that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to Wehbe and states:

"...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

Clause 4.6(3)(a) requires that the written request to vary a development standard demonstrate that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case. Requiring strict compliance with the standard is unreasonable or unnecessary because:

- the development is consistent with the standard and zone objectives, even with the proposed variation (refer to Section 7 below);
- there are no additional significant adverse impacts arising from the proposed non-compliance; and
- important planning goals are achieved by the approval of the variation.

On this basis, the requirements of Clause 4.6(3)(a) are satisfied.

5. Sufficient environmental planning grounds (Clause 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 24) states:

The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the

development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

The assessment of this numerical non-compliance is also guided by the decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* and *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248* whereby Justice Pain ratified the original decision of Commissioner Pearson. The following planning grounds are submitted to justify contravening the maximum building height:

1. Significant topographical fall

- a. The topography is a site specific reasons for this variation.
- b. The subject site has a fall of approximately 11m to 15m from the eastern boundary (Bluegum Crescent) to the western boundary (shared with the R3 zone). The distance between the eastern and western boundary is relatively short, measured at 39.225m. The steep and undulating topography varies the extent of non-compliance across the entirety of the development.
- c. The fall from eastern to western boundary exacerbates the extent of non-compliance to the uppermost level of both Buildings A and B. Specifically, the proposal is predominantly compliant with the building height development standard for both buildings as they front Bluegum Crescent, excluding a portion of the south-eastern corner of Building A. As the building approaches the western boundary, given the topography of the land, the extent of non-compliance is presented and increases considerably, despite providing a constant roof RL for each building. The numerical difference between the eastern and western portions of both buildings demonstrates that the sites topography has worsened the extent of non-compliance and identifies that this is a site-specific condition which Clause 4.3 of the WLEP does not anticipate.
- d. In addition to the above, the subject site also valleys in an east-west direction, centrally within the site. This further exacerbates the extent of non-compliance for both Buildings A and B. That is, whilst Building A and Building B are compliant along parts of their northern and southern edges (respectively), the sites central east-west valley creates new variations. This is an additional topographical characteristic which should be considered in this request.
- e. Further to the above, Building A presents to Bluegum Crescent as four storeys, whilst Building B presents to Bluegum Crescent and Frenchs Forest Road West as five storeys. These storey heights are consistent with that envisaged by the development standard and WDCP. Therefore, the proposed development as it addresses the public domain, will be consistent with the desired future character of the locality. It is only the topography which results in an increase in storey height towards the western boundary.
- f. The part of Building B which is non-compliant as it fronts Frenchs Forest Road West is limited in height and will not be visually obtrusive or jarring. The topography exacerbates this non-compliance as it falls to the western boundary. Furthermore, the site

topography valleys to the centre of the site which again, increases the extent of non-compliance.

2. The maximum non-compliances are part of a development which is agreed to be of good design.

- a. Object 1.3(g) of the EP&A Act 1979 is “to promote good design and amenity of the built environment”. In this regard, the most prominent extent of non-compliance, being the uppermost western edge of both buildings, has been purposefully designed with a high quality, simplified contemporary character including flat roofing, balcony articulation, compatible materiality and glazed panelling. These elements have been integrated with a recessed uppermost floor which incorporates increased setbacks from Bluegum Crescent, Frenchs Forest Road West and the northern and western boundaries. This ensures that the non-compliant built form, as viewed from the public domain, will not be visually obtrusive or jarring.
- b. Following the above, the uppermost level provides increased setbacks from the public domain and building envelope (below) as to limit the non-compliance. As detailed, the proposal generally complies with the building height development standards as it fronts Bluegum Crescent, excluding a south-eastern portion of the Building A (which is a result of the sites valley characteristic). The following setbacks are proposed, as measured to the edge of the roof form:

Table 1 Setbacks to upper levels		
Built Form	Setback to Boundary	Setback to Envelope Below
Building A	Bluegum Crescent: 8.9m Northern Boundary: 10.6m Western Boundary: 12.7m	Eastern Façade: 2.4m Northern Façade: 4.6m Western Façade: 2.1m Southern Façade: 1.2m
Building B	Bluegum Crescent: 6.2-7.7m Frenchs Forest Road West: 6.5m Western Boundary: 6.0 to 11.4m	Eastern Façade: 1-1.7m Northern Façade: 1.8m Western Façade: 3.9m Southern Façade: nil to 3.9m

The setbacks to the uppermost levels, as outlined in **Table 1**, ensure that the impacts created by the non-compliances are limited, resulting in a development which is consistent with the desired future character of the locality.

- c. To the western boundary, where the topography is steepest and the non-compliance greater, both buildings have been designed with balcony and planter box elements which wrap around the periphery of the uppermost most levels. This provides considerable visual and physical separation to the neighbouring properties and public domain where the height breach pertains to the western portion of each built form. The separation proposed between the non-compliant elements and surrounding locality mitigates the potential sense of enclosure as far as practicable. As detailed above, the non-compliant elements have been recessed and incorporate balcony articulation, glazed panelling and materiality to reduce the physical and visual bulk and scale of the development. This will provide an appropriate transition of built form between the allotments, despite non-compliance.

- d. Following this, the subject site is located in an area which is anticipated to undergo transformation as a result of the newly adopted planning controls. The non-compliant elements have therefore been designed with sympathetic, contemporary architectural features and increased separation, responding to the topography of the site. Whilst the development provides a built form greater than the immediate neighbours, including R2 zone to the north, the locality is anticipated to change which will limit any potential impacts created by the non-compliance. Importantly, the proposal is largely compliant with the WDCP and ADG to ensure compatibility with the surrounding properties.
 - e. When considering the non-compliance to Building A as it relates to the northern boundary shared with the R2 zone, as detailed, the uppermost level is recessed to eliminate visual impacts to the neighbouring properties. Furthermore, the development as it presents to the streetscape complies with the development standard and the controls prescribed in the WDCP, including the building height plane requirement. These design measures, along with those mentioned earlier, ensure an appropriate transition to the low density zone.
3. **The required vehicular access and basement parking has artificially raised the buildings, which have been appropriately designed to respond the surrounding context**
 - a. Frenchs Forest Road is identified as a classified road, and as such, vehicular access must be provided from Bluegum Crescent. In this regard, the site topography creates a unique constraint as it relates to basement and vehicular access design. Specifically, the gradient and length of the vehicular access ramp from Bluegum Crescent is limited by the site's topographical decline, location of the western boundary and relevant standards for driveway design and construction. As a result, this has artificially increased the floor level of the basements and is a site-specific and unique circumstance which has contributed to the non-compliance.
 - b. Following the above, whilst the proposal is non-compliant with the maximum building height, created in-part by the vehicular access requirements, it is purposefully designed so that it will not have any adverse impact to the streetscape or amenity of surrounding properties, as discussed in this Variation. Despite the variation, the proposal will strictly comply with the FSR development standard and will not result in a density beyond that envisaged by the recently adopted planning controls.
 - c. Ultimately, it is not possible to reduce the height of the basement due to the numerous above-listed limitations. To reduce the building height and request strict compliance would result in a considerable reduction in floor area and would be counterproductive to the desired increase in residential accommodation in a highly accessible and strategic location, being the *Frenchs Forest Precinct*.
4. **The remaining non-compliances are minor and will not have adverse impact to the character of the locality.**
 - a. In terms of the lift overruns, these are located centrally within each built form to ensure they will not be visually jarring or obtrusive from the public domain. Whilst the lift overrun to Building A represents the greatest extent of non-compliance where the 13m development standard applies, it relates to infrastructure serving the proposed development and does not relate to residential or habitable floor area. The lift overruns are also designed with a 17m setback from Bluegum Crescent, 13.6m setback from Frenchs Forest Road West, 18.5m setback from the western boundary and 20.8m setback from the northern boundary. The provided setbacks ensures that the extent of non-compliance will limit the visual and physical bulk and scale of the development as viewed from the public domain and neighbouring properties.

- b. Whilst it is noted that part of the planter boxes and glazed balustrades sit above the maximum height (as they wrap around the perimeter of the built forms), the non-compliances maintain appropriate separation and transition to the neighbouring properties. These elements will provide articulation and landscaping to the development and do not contribute to any unreasonable increase in bulk or scale. To remove these elements and improve compliance would be an inferior design, landscaping and amenity outcome.
- 5. Strict compliance with the development standard would result in an undesirable urban and architectural design outcome.**
 - a. Strict compliance with the development standard would require redistribution of floor area within the lower levels which would result in an inferior design outcome. Specifically, the floor area would be relocated between Buildings A and B which would create a single, elongated built form. This is considered to be an inferior design outcome as it would create a greater visual and physical impact, particularly as viewed from Bluegum Crescent, in addition to a reduction of amenity, communal open space and landscaping throughout the site.
 - b. It follows that the proposed non-compliance represents a superior outcome with regards to the character of the development, provision of communal open space, landscaping and amenity of future occupants and neighbouring properties and should be given weight in consideration of this variation request.
- 6. The non-compliances will deliver affordable housing within the Frenchs Forest Precinct**
 - a. Object 1.3(d) of the EP&A Act 1979 is “*to promote the delivery and maintenance of affordable housing*”. The proposed development will dedicate 10% of gross floor area towards affordable housing, as required by the WLEP. If strict compliance was requested and the uppermost levels removed, the quantum of affordable housing within the Frenchs Forest Precinct would be reduced by virtue of a reduction in gross floor area. This is an inferior outcome given the limited impacts of the non-compliance and social benefits that will be delivered.
- 7. Deletion of a floor would not be orderly and economic use of land.**
 - a. Object 1.3(c) of the EP&A Act 1979 is “*to promote the orderly and economic use and development of land*”. The social benefits of providing additional housing stock within a highly sought-after location should be given weight in the consideration of the variation request. It would be a loss to the community (and contrary to the public interest) to deny the variation and require the removal of apartments due to the steep and undulating topography.
 - b. A shorter building would unnecessarily result in a suboptimal provision of housing on the site. This would reduce the contribution of the development to meeting the R3 zone objective to ‘*provide for the housing needs of the community within a medium residential environment*’. Under-provision of housing within an R3 zone simply diverts people to be resident in areas with reduced opportunity for access to transport links or an urban environment well-suited for walking and cycling.
- 8. The impacts of the height breach will be imperceptible.**
 - a. It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality.

- b. The extent of the additional height creates no adverse overshadowing impacts to adjoining properties when compared to a compliant building envelope. That is, despite the additional shadow cast by the non-compliant element, this is generally over the public domain thus ensuring that the proposal will not impact the solar gain of the properties to the west and east. As such, additional overshadowing caused by the non-compliant elements would be insignificant.
- c. The height breach does not result in any adverse additional privacy impacts. Where the non-compliance pertains to the glazed openings, these have been designed with increased setbacks to the northern and western boundaries and orientate living areas to the public domain, where practicable. This ensures that any additional loss of privacy caused by the non-compliant elements would be insignificant.
- d. The height of building breach does not result in view loss which is not reasonably anticipated within the planning controls and site context. When considering the extent of view sharing, it is noted that the height breach is a result of the site topography. As such, it is anticipated the extent of view loss caused by the non-compliant element would be insignificant or nil.

9. The impacts of the height breach will satisfy relevant environmental planning instruments.

- a. The proposed development meets the objectives of the development standard and meets the objectives of the R3 Medium Density Residential zone (as further detailed in Section 7 below).
- b. The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:
 - i. The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for residential uses (1.3(c));
 - ii. The proposal promotes the delivery and maintenance of affordable housing (1.3(d));
 - iii. The proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).
- c. The variation to the height of buildings development standard will give better effect to the aims of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* (SEPP 65). In particular:
 - i. The proposed variation will provide more sustainable housing in social and environmental terms and better achieve urban planning policies (clause 2(3)(a)(i));
 - ii. to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define (clause 2(3)(b));
 - iii. to contribute to the provision of a variety of dwelling types to meet population growth (clause 2(3)(f));

- iv. Approval of the proposed variation will support a variety of housing types by providing a well-located and compact development that will be a better choice for families (clause 2(3)(g)).

The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development, particularly given the undulating and steep topographical incline of the site, which has a significant fall from the eastern boundary (Bluegum Crescent) to the western boundary. The additional height does not significantly impact the amenity of the neighbouring properties (when compared to a compliant development) and has been designed in such a way to ensure the additional height is not visually jarring from the public domain.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. *The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.*
87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

6. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), (Clause 4.6(4)(a)(i))

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a 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 matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 4 above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in Section 7 below). Clause 4.6(3)(b) is addressed in Section 5 above.

The second opinion of satisfaction, in clause 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 particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 7 below.

7. 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 (Clause 4.6(4)(a)(ii)).

Height of Buildings Objectives

The objectives and relevant provisions of Clause 4.3 of WLEP 2011 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.*

In order to address the requirements of subclause 4.6(4)(a)(ii), each of the relevant objectives of Clause 4.3 are addressed in turn below.

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

It is noted that objective (a) refers to being "compatible" with height and scale of surrounding and nearby development. It is considered that "compatible" does not promote "sameness" in built form but rather requires that development fits comfortably with its urban context. Of relevance to this assessment are the comments of *Roseth SC in Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191*:

"22 There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve."

In accordance with the above and when considering the height and scale of surrounding developments, it is imperative to note that the subject site and surrounding locality is anticipated to undergo significant change given its location within the Frenchs Forest Precinct under *Part 8 Frenchs Forest Precinct* of WLEP 2011. The Frenchs Forest Precinct was recently subject to an up-zoning and uplift in planning controls in response to the *Hospital Precinct Structure Plan* and *Frenchs Forest Place Strategy 2041*. As is described in detail below, the locality is therefore anticipated to undergo a significant transformation and it pertains to the height and scale of development. For reference, the objectives of *Part 8 Frenchs Forest Precinct* are as follows:

- ...(a) to facilitate development in accordance with the objectives and principles of the Frenchs Forest 2041 Place Strategy,*
- (b) to promote design excellence in relation to buildings, open space and public domain areas,*
- (c) to ensure a balance between the provision of high quality housing and a mix of retail, business, employment, civic, cultural and recreational facilities,*
- (d) to accommodate additional employment opportunities, service functions and space for business,*
- (e) to ensure development positively contributes to the visual quality and pedestrian comfort of the public domain and provides a seamless integration between public and private spaces,*
- (f) to ensure development is designed with consideration of transport infrastructure,*
- (g) to ensure development is sustainable and contributes to reducing greenhouse gas emissions,*
- (h) to ensure high quality landscaped open space...*

Despite non-compliance, the proposal is consistent with the objectives of the Frenchs Forest Precinct and will deliver a contemporary residential flat building development which will achieve design excellence. The proposal will provide a sustainable development with high quality residential accommodation, landscaping and open spaces. Achievement of the abovementioned objectives ensures, in-part, that the proposal will be compatible with the height and scale of existing and future developments in the locality.

Following this, the desired future character of the locality, as it pertains to building height, bulk and scale, must also be set by the existing, recently approved and proposed buildings within the neighbourhood per *Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115*. As detailed, the subject site and surrounding locality have been recently rezoned, with an uplift to the planning controls. As a result, the locality is anticipated to undergo a significant increase in density and the existing size, scale and height of development in the immediate locality is not definitive.

Directly to the east, west and south, the neighbouring properties are underdeveloped and do not represent the desired future character of the locality as anticipated by the relevant development standards and controls. To the north however, the adjoining properties are zoned R2 Low Density Residential and are not anticipated to undergo any significant changes. As such, the established buildings to the north and desired built form to the east, west and south have been considered as part of the character of the locality. Of relevance, the proposed development presents as one of the first applications seeking to benefit from the uplift in planning controls.

Following this, the proposal is best described as a residential flat building which is permissible in the zone and is consistent with the desired future character of the locality. The proposal complies with the floor space ratio development standards and the majority of building envelope controls contained within the WDCP. In

terms of building height, the standard anticipates a four storey form where the 13m limit applies and six storey form where the 17.5m limit applies, in which the proposal complies for Building A and Building B, respectively. The proposed height encroachments, which are a direct result of the sites topography, does not create a built form which is incompatible with the desired character and typology of developments throughout the locality.

These non-compliant elements are provided within a high-quality built form which is well articulated and is consistent with the objectives and principles of the LEP and DCP. The design has integrated various elements to reduce bulk and scale at the point of greatest variation, including considerable setbacks, framing, parapet edges, balcony articulation and glazing, within a recessed floorplate. The built form, which is consistent with the intent of the WDCP, is considered to respond to the existing and desired future character of the locality. Specifically, and when considering the R2 zone to the north, the non-compliant elements are setback appropriately, will be screened by podium landscaping and form part of a recessed upper level, thus ensuring a compatible height and scale to surrounding developments.

As detailed, the proposal provides a built form which is reflective of the objectives of the WDCP and character of the locality, in that the development will provide an articulated built form appropriately addressing the streetscapes. This ensures that despite non-compliance, the proposal is consistent with the desired building pattern in the locality. The burden on insisting on strict compliance would result in the removal of high quality, residential apartments which would be an unreasonable and unnecessary outcome given the scale of the proposal is compatible with the character of the locality. Additionally, the proposal does not result in any adverse impacts to the amenity of the neighbouring properties as is discussed in objective (b).

The proposal is therefore consistent with objective (a), despite the height breach.

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

In terms of visual impact, the bulk and scale of the proposed development has largely been addressed in responses to objectives (a), (c) and (d). For the reasons discussed in relation to those objectives, including setbacks, design and materiality, the proposed development represents a bulk and scale which is compatible with the existing and desired future character of the locality. Furthermore, when viewed from the public domain and neighbouring properties, the design and siting of the non-compliance provides considerable visual and physical separation thus mitigating any potential sense of enclosure or visual impact. That is, the proposal presents to the public domain as a predominantly compliant built form with the non-compliances resulting from the site topography. The contemporary design, including framing, balcony articulation, fenestration and setbacks, in conjunction with the modern materials and neutral colour scheme, ensures that the proposal is not visually jarring from the streetscape.

In the case of view loss, the proposed variation will not result in any significant loss of views or outlook compared to a building with a compliant height. Importantly, there are no significant views currently enjoyed across the subject site from the public domain or neighbouring properties and the applicable planning controls effectively anticipate a continuous 13m and 17.5m high built form along Bluegum Crescent and Frenchs Forest Road West. As the existing buildings are under-developed relative to the height control and the proposal is predominantly compliant as it presents to the public domain, the expectation to retain any views through the permissible building envelope is considered unreasonable. It follows that there is a reasonable expectation that the views would be lost with any redevelopment of the site and therefore loss of views must be considered against the backdrop of the permissible planning controls. Accordingly, any potential loss of views created by the non-compliance is considered to be reasonable.

In terms of privacy, the height breach does not result in any adverse additional privacy impacts. The areas of non-compliance, as they pertain to glazed openings, include greater setbacks and podium landscaped screening to protect the privacy of future residents and neighbouring properties. When considering these openings to the north and west, they are generally compliant with the ADG separation requirements and WDCP, therefore mitigating potential overlooking. Further to this, the variations will not result in any adverse internal privacy impacts due to orientation and treatment of facades. As such, the parts of the building which do not comply with the height development standard do not result in any further privacy impact beyond a compliant built form given the above-mentioned design measures.

With regards to overshadowing, the proposed height breach will not result in any adverse overshadowing as opposed to an entirely compliant built form. The shadow diagrams submitted confirm that the proposal will not result in any significant additional overshadowing to the surrounding properties beyond what is permitted by the increase of density envisaged by the WLEP and WDCP. That is, despite the anticipated increase density, the proposal will retain appropriate solar access to the neighbouring properties during mid-winter as the majority of a shadows cast will be onto the public domain. As such, the additional overshadowing impact as a result of the height breach when compared to a compliant development are insignificant.

Therefore objective (b) is achieved.

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

Objective (c) seeks to minimise adverse impacts of development on the scenic quality of Warringah's characteristic environments.

The subject site is not within close proximity to any coastal area, however, it can be stipulated that the site is within proximity to bush environments. In this regard, the proposed development is designed specifically to maximise the provision of vegetation throughout the site by providing ample deep soil and landscaped areas. Importantly, the non-compliant building height will not compromise the provision of vegetation and will ensure the delivery of a development which will complement the scenic bushland quality of Frenchs Forest.

Further to the above, the variations are generally limited to western portions of the recessed upper levels within Buildings A and B. That is, the proposal is appropriately designed to respond to the topography of the site to provide a compliant built form as it presents to the public domain. Additionally, the proposal also incorporates relevant architectural features (such as setbacks, framing, balcony articulation and fenestration), materiality and colour scheme to reduce the impact created by the non-compliances. This ultimately ensures that whilst the development will vary the permitted standards, it will minimise impacts to the bushland setting.

The proposal is therefore consistent with objective (c), despite the height breach.

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

This objective seeks to manage the visual impact of the development as viewed from public places.

The 13m and 17.5m height of buildings control essentially anticipates that a four and six storey building can be constructed on the site, respectively. In this regard, Building A is designed to present to Bluegum Crescent as four storeys, whilst Building B a five storey form to Bluegum Crescent and Frenchs Forest Road West. The proposed development is designed to align with the building envelope as envisaged by

the WLEP and WDCP, providing a built form which appropriately transitions to the R2 Low Density Residential zone, managing any potential visual impact of the development as viewed from the public domain.

Whilst the proposal is non-compliant, it is the topography which results in a breach to the development standards as it dramatically falls from the eastern to western boundaries. Notwithstanding, the proposal is designed to minimise the extent of non-compliances as far as practicable (in addition to their visual impact) and respond to the desired future character of the locality, as discussed in this Variation. That is, the proposal provides recessed uppermost levels, balcony articulation, fenestration and materiality to deliver a sympathetic development which will have no adverse visual impact as viewed from the public domain.

As detailed, the development is predominantly compliant with the building height development standard fronting Bluegum Crescent. It is only a south-eastern portion of Building A which encroaches the maximum height as it addresses Bluegum Crescent and is a result of the sites topography which contains a valley located centrally. As a result, and when viewed from the public domain, the visual impact will be appropriately managed given the provision of a four storey form as is anticipated by the control. Importantly and as the building shares the boundary with the R2 Low Density Residential zone, the north-eastern corner of Building A is situated well below the permitted building height to ensure an appropriate transition of density and limit visual impact.



Figure 9 Perspective of development as viewed from Bluegum Crescent

Along Frenchs Forest Road West, the south-eastern corner of Building B will comply with the 17.5m development standard. As the topography of the site falls considerably from the eastern to western boundary, a part of the recessed uppermost floor will be non-compliant. Whilst varying the standard, this does not represent the greatest extent of non-compliance to Building B and is again appropriately designed within a recessed built form. To the casual observer along Frenchs Forest Road West, the proposal will present to the public domain as a five storey form which is highly articulated and softened by dense landscaping. The proposed arrangement of Building B is therefore considered to be a significant visual improvement when compared to a sheer 17.5m building height as anticipated by LEP.



Figure 10 Perspective of development as viewed from Frenchs Forest Road West

Overall, it is considered that the proposed height encroachments do not result in a development which will be incompatible with the desired medium density character of the R3 zone and low density character of the R2 zone. The proposal will appropriately manage visual impact through a high quality built form and a coherent streetscape appearance with building elements that complement the topography of the site and are appropriately setback from the public domain.

The burden of insisting on strict compliance would result in the removal of the uppermost levels which would be an unreasonable and unnecessary planning outcome given the nature of the non-compliance. Resultantly, this would be relocated centrally between Buildings A and B resulting in the provision of a single, elongated and unarticulated built form. Therefore, the visual impact of the non-compliance as viewed from the public domain is appropriately managed and the proposal satisfies Objective (d).

Objectives of the Zone

Clause 4.6(4)(a)(ii) requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives. The objectives of zone R3 Medium Density Residential are as follows:

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

The proposed development will provide for the housing needs of the community through providing a mixture of apartments typologies within a medium density environment. The proposal will deliver a total of 44 residential apartments to meet the housing demand within the Frenchs Forest Precinct, of which 7 will be dedicated as affordable housing.

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

The proposed development will provide for a variety of apartment types including 7 x 1 bedroom, 30 x 2 bedroom and 7 x 3 bedroom apartments, including 5 adaptable dwellings. 7 apartments will also be dedicated as affordable housing.

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

The proposal is not antipathetic to this objective and will allow for residents to utilise surrounding facilities and services.

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

The proposal will provide significant landscaping throughout the site and to both frontages which will enhance the residential medium density environment through considerable improvements to the landscaped character over existing.

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

The proposed development will provide a high quality contemporary development which will satisfy the objectives of the Frenchs Forest Precinct through the delivery of a residential flat building development which will improve the sites presentation to the streetscape and open spaces. The non-compliant height will not impact the visual quality of the development as it presents to the public domain.

The proposed development, including those parts of the building that breach the height of buildings development standard, are not antipathetic to the objectives for the zone and for that reason the proposed variation is acceptable.

8. The concurrence of the Secretary has been obtained (Clause 4.6(4)(b))

The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

9. Whether contravention of the development standard raises any matter of significance for State or Regional environmental planning (Clause 4.6(5)(a))

Contravention of the maximum height development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

10. The public benefit of maintaining the development standard (Clause 4.6(5)(b))

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the maximum building height. As such there is no public benefit in maintaining strict compliance with the development standard. Whilst the proposed building height exceeds the maximum permitted on the site by 2.55m (19.6%) where the 13m limit applies and 2.37m (13.5%) where the 17.5m limit applies, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

11. Conclusion



This written request has been prepared in relation to the proposed variation to the 13m and 17.5m height of buildings development standard contained in Clause 4.3 of WLEP 2011.

Having regard to all of the above, it is our opinion that compliance with the maximum height development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The proposal has also demonstrated sufficient environmental planning grounds to support the breach. Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and the variation supported.



Design + Sustainability Advisory Panel Meeting Report Date 27 April 2023

Item 3 - DA2023/0285 - 142 Frenchs Forest Road West & 1, 3 & 5 Bluegum Crescent FRENCHS FOREST

PANEL COMMENT AND RECOMMENDATIONS

General

A pre-lodgement proposal, PLM2022/0207, for the development was referred to DSAP on 24 November 2022.

The DSAP Report concluded that:

- *The Panel does not support the proposal in its current form*
- *The Panel acknowledges that this is a Pre-DA proposal for development on a site with a challenging topography*
- *The Panel **recommends further testing of site layouts, setbacks, heights as recommended above**, to optimise amenity, landscape and development outcomes*
- *The Panel recognises that the controls applying to the site are challenging. For this reason, it is important to explore which controls are most important and which might be breached in order to achieve the optimum outcome on the site. This is the role of the Panel to indicate which controls proposed to be varied are acceptable*
- *As noted, some of the definitions (definition of storeys for example) are challenging with the overall intentions for the area (6 storeys to Frenchs Forest Road West) and with the prescribed height limits*
- *The Panel refers the applicant to the Apartment Design Guide for aspects related to amenity and internal planning of apartments.*

The Panel has been provided with the detailed notes from the PLM of 8 December 2022. The Panel assumes the design was the same as that presented on the 24th of November.

The applicant has provided a schedule of changes in response to the PLM meeting in the SEE.

The DSAP Report included a total of 31 recommendations.

The design remains substantially the same. The Panel was disappointed not to be provided with marked up set of drawings that clearly show the changes in response. However, this is understandable given that there were very few changes and the suggestion that alternative massing and car parking arrangements be investigated has not occurred at all.

A schedule of the 31 recommendations and the responses appears as appendix at the end of this report.

The Panel has reviewed the comments and notes from the PLM and supports all of them noting numerous non-compliances in relation to building heights, setbacks, and the amount of landscape area and loss of mature trees in particular.

Overall, the Panel expected substantial changes to the overall approach (configuration of buildings and carparking and massing), however the planning and massing, internal layouts of carparking levels and units has remained essentially the same with very minor changes.

Accordingly, the Panel sees no merit in repeating its previous recommendations that remain relevant.



The Panel agrees with the PLM comment;

The FSR appears compliant, however, this is a maximum and requires compliance with the objectives of the FSR control and other relevant controls including height and LOS.

It should be noted that the maximum floor space ratio is exactly that; a maximum that may be achieved if other planning objectives are met; it is not as of right.

As the Panel noted previously, the site is challenging given the topography and changes in level however it would appear there has been little attempt to change the design to better fit with the site or to comply with height controls.

The Panel's comments and recommendations could be understood as an invitation and encouragement to explore different approaches but as noted this has not been taken up.

Design excellence

The relatively unchanged proposal has now been submitted as a Development Application. Accordingly, it is now appropriate for the Panel to consider whether the proposal "exhibits design excellence".

The site is part of Precinct "G" and subject to cl 8.5 Design Excellence.

"Excellence" simply means that something is 'very good' which raises the question: 'compared to what'. It is Panel's view that a scheme that achieves minimum compliance can be taken as a 'baseline' to which proposal can be compared. To exhibit design excellence, a proposal would need to exceed or 'excel' in relation to some aspect.

Panel understands that it constitutes the Panel referred to in Cl. 8.5 (5): **design review panel means a panel of 3 or more persons established by the consent authority for the purposes of this clause.**

It should be noted that consent **must not be granted** by the authority unless the findings of the Panel are considered.

Accordingly, the 'findings' of the Panel in considering whether the design exhibits 'design excellence' are as follows:

(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,

Finding: the articulation, material selection, colours and composition of the building is attractive and appropriate for its setting, but the overall massing and the resulting impacts on neighbouring properties outweigh these positive aspects.

Finding: neutral to negative

(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,

The development neither detracts from nor contributes to the public domain.

Finding: neutral

(c) whether the development detrimentally impacts on view corridors,

The development will not affect any view corridors and will not open up new ones.

Finding: neutral/not applicable

(d) how the development addresses the following matters—

(i) the suitability of the land for development,

The suitability of the land for development has been determined by the strategic planning for the area and subsequent zoning. It is not clear to the Panel how any proposal would 'exhibit excellence' in relation to the suitability of the site for development.



Finding: neutral/not applicable

(ii) existing and proposed uses and use mix,
As for (i)

Finding: neutral/not applicable

(iii) heritage issues and streetscape constraints,

There are no heritage issues. In relation to 'streetscape constraints', the only 'constraint' the Panel is aware of is the requirement that future undergrounding of power is not impeded. The Panel notes that council officers identified a number of issues at the PLM that have not been resolved in the submitted plans.

Finding: negative

(iv) the relationship of the development with other existing or proposed development on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,

The proposal does not comply with many of the built form controls that were developed specifically to address some of these issues.

Finding: non-compliant, strongly negative

(v) bulk, massing and modulation of buildings,

The proposal does not comply with many of the built form controls.

Finding: non-compliant, strongly negative

(vi) street frontage heights,

The Panel noted that the 17.5m height limit would not accommodate 6 storeys but left open the opportunity to explore different massing that might break the height controls but achieve a better overall result. The site is on the southern side of the street block so additional height would have no impact on neighbouring properties as the height was concentrated on Frenchs Forest Road. Consideration would need to be given to impacts on view lines from future development on the southern side of Frenchs Forest Road, however given the variation in topography the impact is likely to be minimal. The purpose of the Pre-DA process is to facilitate an open discussion and exploration of alternative arrangements of massing and built form to achieve an optimum outcome. This opportunity was not taken up by the applicant at either the DSAP meeting or in the development of the design subsequently.

Finding: non-compliant, with no justification, or demonstration of benefits of any non-compliance

(vii) environmental impacts including overshadowing, wind and reflectivity,

Finding: compliant, neutral does not exhibit 'excellence'

(viii) the achievement of the principles of ecologically sustainable development,

Finding: compliant, neutral does not exhibit 'excellence'

(ix) pedestrian, cycle, vehicular and service access, circulation and requirements,

Finding: compliant, neutral does not exhibit 'excellence'

(x) the impact on, and proposed improvements to, the public domain,

Finding: compliant, neutral does not exhibit 'excellence'



(xi) the quality and integration of landscape design.

Finding: the overall configuration of the building requires the removal of many mature trees and provides common open space with little amenity or useability.

Finding: negative

Overall, the finding of the Panel is that the proposal does not, on balance exhibit 'design excellence'. On the contrary it does not comply and fails to justify the non-compliances or demonstrate any benefits that result from non-compliance.

Strategic context, urban context: surrounding area character

Addressed in previous advice that remains relevant due to the design being unchanged.

Scale, built form and articulation

Addressed in previous advice that remains relevant due to the design being unchanged.

Access, vehicular movement and car parking

Addressed in previous advice that remains relevant due to the design being unchanged.

Clustering of driveway, pedestrian entrance and bin stores will not create a quality arrival experience for residents or visitors.

Recommendation

1. Clustering of driveway, pedestrian entrance and bin stores will not create a quality arrival experience for residents or visitors – clarify as part of any re-design.

Landscape

Addressed in previous advice that remains relevant due to the design being unchanged.

Previous comments

43 trees are proposed to be removed out of a total of 68. (9 being endemic species). This is a 63% reduction in mature trees with associated reduction on canopy cover, loss of habitat and character. This includes the removal of some large Angophora and Eucalyptus species.

Only 28 trees are proposed to be replaced which are mostly small species. We would expect at least a 1:1 existing tree removal/ New tree replacement as a minimum which excludes any carbon sequestration replacement.

As a result, we do not support the proponent's proposition that "deep soil landscaping permits a variety of vegetation which will account for tree removal".

We do not support any reduction in landscape open space requirements. The maximum area is required to maintain tree canopy and soil depths should reflect soil volumes required for areas on slab.

Recommendations

- *Install more endemic large canopy trees to reduce the density and visual impact of the proposed buildings and site works.*
- *Maintain at least a 1:1 existing tree removal/ New tree replacement i.e. 43 trees as a mix of small, medium and large canopy species. This should include the replacement of minimum 9 endemic canopy species including Angophora and Eucalyptus species.*
- *Ensure these large trees have suitable soil volumes over slab or deep soil to reach their full potential.*



- *Explore non trafficable (extensive) green roof to top level in combination with PV panels to mitigate heat Island effect of roofs and ecological outcomes and stormwater detention.*

Additional comments

Removal of trees remains. 20 prescribed trees are removed, unquestioningly due to impacts of the development. Tree 40 for example is central to the site and a significant Melaleuca. Note the inclusion of some large species, new trees.

Naturalistic form incongruous with the rest of the design.

The site has the potential to create a design generated around the qualities of the site including the slope and existing trees. The proposal is not nuanced and is a blunt approach to a complex site.

The landscape architect does not have much to work with in terms of creation of useable communal open space areas for residents. Given the height breach communal open space on the rooftop, that could be more usable is not provided (although PV is positive – should be co-located with green roof).

In the detail, suggest there is no need for the few exotic species, and these could easily be switched to equivalent native alternatives.

Decks as communal open space do not offer adequate area or amenity. The requirement under the ADG for communal open space is 25% and for this number of units this should be met as usable open space.

The treatment to the basement wall on the west is inadequate. It is screened by planting, but the architectural treatment would have to be excellent to have such a large car park wall to a potential neighbouring communal open space. Green wall, terraced, architectural quality – many options that have not been explored.

Recommendations

2. Confirm number of additional significant trees retained in new scheme, 1:1 replacement of trees removed and size/species of replacements. Quantify existing and future canopy cover (based on number and species).
3. Reduce, lower, adjust, articulate the basement to allow the retention of more of the existing trees and reduce the impact on the western site (future and existing dwellings)
4. Reconsider entry sequence and treatments in relation to the driveway ramp and bin store particularly for the northern building
5. Re-design to allow the incorporation of significantly more accessible communal open space with appropriate resident amenity. May not meet but should go close to the 25% required under the ADG.
6. Engage with the landscape architect on the site planning and design to develop a more integrated solution that 'fits' within the site. Existing forms, retention of trees and quality of future spaces and character.

Amenity

Connection of lift core to natural light on all levels is poor. Some have none, others do not make the most of the natural light provided.

The common area is small and there is no outside useable space or facilities indicated.

The outlook from units B102, 202, 302 into the back of Building A is poor- consider removing studies or having deep set balconies project forward to improve outlook.

Recommendations

7. Adjust planning to rationally and clearly allow natural light access to the lift lobby on each level
8. Provide a more generous common area and associated facilities



9. The outlook from units B102, 202, 302 into the back of Building A is poor- consider removing studies or having deep set balconies project forward to improve outlook.

Façade treatment/Aesthetics

The facade and materials are attractive and appropriate for the location.

Sustainability

The role of the Panel is to advise on 'design (quality) and sustainability' and is not confined to existing legislation or the approaches of the past.

Accordingly, the Panel believes it is appropriate and necessary for it to provide 'forward-thinking advice' to both proponents and to council staff involved in the assessment of development.

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

Recommendations to achieve 'excellence'

The following aspects of design and servicing can be easily and cost effectively considered for inclusion, and align with Recommendations 23, 24, 25, 26, 27, 28, 29, 30, and 31 from the previous DSAP Report:

1. Decarbonisation of energy supply
 - a. **All services should be electric** – gas for cooking, hot water and heating should be avoided
 - b. Heat pump systems for apartments or other ways of providing electric hot water should be considered
 - c. The storage of hot water can be considered a de facto battery if heated by PVs during the day
 - d. 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
 - e. Unshaded roof space is a valuable resource for PV installations. Their efficacy can be greatly enhanced when placed over a green roof, which has additional ecological benefits.
2. EV charging: **Provide EV charging points for each unit** (Min 15 amp) to suit level 1 charging
3. Passive design and thermal performance of building fabric
 - f. Higher BASIX thermal performance standards that will commence on 1 October 2023 will be an **average 7 stars NatHERS, with no unit below 6 stars**. This is consistent with the National Construction Code for 2022. Given the coastal location a very comfortable indoor environment should be achievable.

The inclusion of ceiling fans to all bedrooms and living rooms will provide comfort with minimal energy while reducing the need and energy required for air-conditioning.

PANEL CONCLUSION

The Panel does not support the design as it remains essentially unchanged from that submitted at Pre-DA stage.

The Panel does not consider the design to exhibit 'design excellence' in accordance with cl 8.5 of Warringah LEP 2011 and bases this overall finding on the failure to meet compliance in a number of regards, without justification, and bare compliance, as compared to 'excellence' in many others. See below -

Appendix: response to previous recommendations and advice

	Recommendation	Response	
1	Alternative layouts and site planning strategies should be investigated to achieve the objectives of the Frenchs Forest 2041 Place Strategy and to provide an acceptable interface to the surrounding low density residential areas.	Alternatives not investigated	
2	Investigate reducing the front setback from Bluegum Crescent i from 6.5m to 4.5m. This front setback area is to contain a maximum of 25% private open space to allow for ground floor ADG POS compliance. The remaining 75% area is to be deep soil that is landscaped with mature trees and understorey planting and will be maintained by the body corporate gardener (see Landscape comments);	Suggestion not taken up	
3	The entire length of the basement carpark could be set back a minimum of 6 metres from the western boundary. The 6m setback zone could be deep soil with mature trees and understorey planting that will be maintained by the body corporate gardener (see Landscape comments);	Unchanged, 4.575m	
4	Building A should comply with the DCP 45-degree height plane at the north-western corner;	The proposal does not comply; it is not clear to the panel how the PLM determined that the building was 2 storeys within 12m of the R2 zone or how the proposal fits within the 45degree envelope.	
5	Building A and Building B should comply with the ADG building setbacks from side boundaries along the western boundary, with the 2 parking levels being storeys;	Unchanged	
6	Ground and first floor levels of Building B should be set back 6m from the western boundary;	Unchanged	
7	Levels 2, 3, 4 and 5 of Building B should be set back 9m from the western boundary, except for the zero-lot line part of the building addressing Frenchs Forest Road;	Unchanged	
8	Building B could have a maximum building height of 6 storeys along Frenchs Forest Road and Bluegum Crescent but may exceed the numeric height limit.	Unchanged	
9	The top floor of Building B could be set back from the western boundary above the carpark so that the overall building height is 6 storeys in any place along the Frenchs Forest Road frontage;	Unchanged	
10	The top floor of Building B should be set back from Frenchs Forest Road in accordance with the development controls.	Unchanged	

11	Test alternative site layouts within the above setbacks and heights to minimise impacts on the neighbours and minimise the visibility of the car ramp and waste bin areas.	Unchanged, minor changes to the finishes and façade of car park	
12	Test car park layouts and ramp configurations to assist in achieving desirable built form and deep soil outcomes.	Unchanged	
13	Install more endemic large canopy trees to reduce the density and visual impact of the proposed buildings and site works.	The landscaped area remains the same and the opportunity to set the building back from the western boundary in order to maximise the number of mature trees that could be retained has not been explored or adopted.	
14	Maintain at least a 1:1 existing tree removal/ New tree replacement ie. 43 trees as a mix of small, medium and large canopy species. This should include the replacement of minimum 9 endemic canopy species including Angophora and Eucalyptus species.	Not clear in the documentation	
15	Ensure these large trees have suitable soil volumes over slab or deep soil to reach their full potential.	Not clear in the documentation	
16	Explore non trafficable (extensive) green roof to top level in combination with PV panels to mitigate heat Island effect of roofs and ecological outcomes and stormwater detention.	Unchanged	
17	Test built form site layouts, including a more 'perimeter block' form, possibly with additional lifts to maximise natural ventilation and solar access;	Alternatives not tested	
18	Minimise the effects of noise and pollution on living areas through apartment orientation and screening; aim to minimise the number of units with single southern aspect that also open to the busy road.	Unchanged, but there are few single aspects apartments	
19	Test vertical and horizontal façade compositions to reduce the perceived length and height of built forms;	Unchanged, no attempt to step building forms to follow topography on Frenchs Forest Road West.	
20	Consider materials that are durable and age gracefully with little maintenance;	Material selection acceptable	
21	Consider materials and colours that relate well to the landscape setting. Avoid large areas of colours that are excessively prominent within the landscape setting.	Material selection acceptable	
22	Rainwater reuse, connected to irrigation as well as some of the apartments for toilet flushing or laundries or both.	Complies with BASIX, does not exhibit excellence	
23	Solar panels should be included to as much of the roof top as possible.	Complies with BASIX, does not exhibit excellence	

24	EV charging – make sure there is capacity for all dwellings for future charging.	2 charging point on upper level shown, this is likely to be inadequate in the future and difficult to retrofit given peak electrical demand that may be required	
25	Allow for bi-directional (2-way) charging of EV battery for powering the building.	Not indicated	
26	Heat island – look at a green roof under solar panels to reduce heat island effect and to improve efficiency of the panels.	Unchanged	
27	Passive design – the extent of glazing on the northeast corner on Frenchs Forest Road will result in those apartments being very cold in winter. Reconsider the amount of glazing on this corner.	Unchanged	
28	All services should be electric – gas for cooking, hot water and heating should be avoided.	Gas fired boiler, advice ignored, does not exhibit excellence	
29	Heat pump systems for apartments or other ways of providing electric hot water should be considered.	Gas fired boiler, advice ignored, does not exhibit excellence	
30	The storage of hot water can be considered a de-facto battery if heated by PVs during the day.	Advice not taken, does not exhibit excellence	
31	The Department of Planning advises that dwellings with electric heat pump hot water systems, efficient reverse cycle air conditioners and induction cooktops can achieve the higher BASIX standard. Accordingly, the Panel recommends that to contribute to design excellence in sustainability, these appliances and fittings be utilised as a sustainability commitment to avoid the use of high emission energy sources such as gas.	Advice not taken, does not exhibit excellence	

ITEM 4.2

**DA2022/1950 - 23 ASHBURNER STREET, MANLY -
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING
HOUSE INCLUDING SWIMMING POOL**

AUTHORISING MANAGER Rod Piggott

TRIM FILE REF 2023/732908

ATTACHMENTS

- 1 [↓ Assessment Report](#)
- 2 [↓ Site Plan & Elevations](#)

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/1950 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 1 DP 926840, 23 Ashburner Street, MANLY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1950
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Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 1 DP 926840, 23 Ashburner Street MANLY NSW 2095
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Michael John Harvey Jane Ellen Hughes
Applicant:	Michael John Harvey

Application Lodged:	21/03/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	27/03/2023 to 10/04/2023
Advertised:	Not Advertised
Submissions Received:	10
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,310,000.00
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EXECUTIVE SUMMARY

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

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to receipt of 10 objections.

Concerns raised in the objections predominantly relate to overshadowing, privacy, setbacks, geotechnical risk, tree removal, loss of on-street parking and the proposed new driveway.

Critical assessment issues include front, side and rear setbacks, total open space, and the issues raised in the submissions.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for demolition of the existing detached dwelling house and construction of a new detached dwelling house as follows:

- Construction of a new driveway, with hardstand space,
- Basement level containing mechanical plant and water retention,
- Ground floor bedrooms with ensuite, courtyard, open plan kitchen, living room and dining room, rear terrace, lap pool, and pool room,
- First floor main bedroom suite with rear and front balconies, study, walk-in robe and ensuite.

The above description is accurate to the amended plans received 27 October 2023 in response to concerns raised by Council. In accordance with the Community Participation Plan, the amended plans did not require re notification, as the amended design results in lesser environmental impact than the original plans.

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 - 6.1 Acid sulfate soils
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.8 Landslide risk

Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 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 - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 1 DP 926840 , 23 Ashburner Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one allotment located on the north-western side of Ashburner Street, Manly.</p> <p>The site is regular in shape with a frontage of 6.705 metres along Ashburner Street and a depth of 47.55 metres. The site has a surveyed area of 318.8m².</p> <p>The site is located within the R1 General Residential zone and accommodates a single-storey detached dwelling house.</p> <p>The site is relatively level, with a minor slope down of approximately 400mm from north (rear) to south (front), and contains two trees.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a variety of residential development types, including detached dwelling houses, semi-detached dwellings, and residential flat buildings.</p>

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site. The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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&A Regulation 2021 requires the consent authority to consider “Prescribed conditions” of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a</p>

Section 4.15 Matters for Consideration	Comments
	<p>design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to setbacks, roof form, overshadowing and stormwater management. Sufficient information was provided to Council on 27 October 2023.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 27/03/2023 to 10/04/2023 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 10 submission/s from:

Name:	Address:
Mrs Julie Anita Bryant	3 / 34 Ashburner Street MANLY NSW 2095
Mr Alastair John Metcalf	4/100 Milson Road CREMORNE POINT NSW 2090
Mr Casey Jackson Burns	10 / 25 Ashburner Street MANLY NSW 2095
Mrs Anne Maree Mandelson Mr Phillip Clifford Mandelson	53 William Street NORTH MANLY NSW 2100
Mr Craig Anthony Hood	24/37-39 Ashburner Street MANLY NSW 2095
Mrs Victoria Maree Bryant	22 / 39 Ashburner Street MANLY NSW 2095
Mrs Isobel Temple Evans	33 / 39 Ashburner Street MANLY NSW 2095
Ms Naomi Margery Spencer	38 Back Forest Road BACK FOREST NSW 2535
Mrs Petra Michaela Jirku	7 / 25 Ashburner Street MANLY NSW 2095
Ms Sinead Ellen Harmon	36 Kenneth Road MANLY VALE NSW 2093

The following issues were raised in the submissions:

- Loss of on-street parking.
- Insufficient side setback for the dwelling and pool to 25 Ashburner Street.
- Geotechnical risk associated with the basement excavation.
- Removal of the rear garden tree and insufficient planting/landscaped area.
- Inconsistent privacy screening on plans - shown on architectural plans but not compliance drawings.

The above issues are addressed as follows:

Parking

Comment:

The amended plans received on 27 October 2023 demonstrate the removal of one on street parking space in order to provide one off-street parking space, and the conversion of the on-street area beside the driveway to be a compliant parking space, thereby resulting in a net gain of one parking space.

Setbacks

Comment:

The proposed development is acceptable with respect to setbacks for the reasons detailed in the section of this report relating to Clause 4.1.4 Setbacks of the Manly Development Control Plan 2013.

Geotechnical Risk

Comment:

The amended plans received on 27 October 2023 predominantly delete the basement level, retaining only the areas for mechanical plant and water retention purposes. The amended works are supported by a geotechnical risk assessment, which demonstrates an acceptably low risk of hazard.

Landscaped Area and Vegetation

Comment:

The proposed development includes replacement tree planting, and is compliant with the landscaped area requirement set by Clause 4.1.5 Open Space and Landscaping of the Manly Development Control Plan 2013.

Privacy Screening

Comment:

The proposed architectural plans demonstrate privacy screening to all side-facing windows, other than W110 at the first floor on the south-western elevation. This window is not of concern, given it is adjoining a walkway only, and is 4 metres from the boundary. The compliance drawings are for assessment information only and will not form part of the consent if the application is to be approved.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulfate)	<p>Supported without conditions</p> <p>Acid Sulfate Soils are on the property - Class 4.</p> <p>A Geotechnical Assessment was undertaken by Crozier Geotechnical Consultants dated 31 July 2023. The report found;</p> <p>The laboratory test results indicate that the soils have a 'Low' Reaction Rate, with the oxidised pH of all the collected soil samples above 4. The proposed new dwelling will require a bulk excavation to a maximum depth of 2.75m (R.L 2.02). As such, it will not intersect or require lowering of water table whilst Actual or Potential Acid Sulfate Soils will not be intersected. As such, according to the Acid Sulphate Soils Management Advisory Committee (ASSMAC) and a management plan will not be required.</p> <p>Environmental Health recommends approval with no conditions relating to Acid Sulfate Soils.</p>
Landscape Officer	<p>Supported, subject to conditions</p> <p>Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to):</p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation

Internal Referral Body	Comments
	<p>• 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable</p> <p>The Landscape Plan is noted, and no concerns are raised. One native Cheese Tree is located within the footprint of the proposed dwelling and should the application be approved, tree loss is unavoidable. Conditions shall be imposed for a native tree replacement to satisfy 4.1.5.2 (c) Minimum Tree Plantings, over and above the planting scheme of the Landscape Plan, to offset the loss of canopy.</p> <p>The Statement of Environmental Effects notes that the "proposed works do not impact any ... existing street trees". All existing street trees within the road reserve of Ashburner Street are listed under the Manly Local Environment Plan as local heritage items (i79). The existing Brushbox within the road reserve fronting the property shall be retained and protected and Landscape Referral requested a tree root investigation within the property along the boundary to map tree roots, and to determine likely roots under the footpath and behind the kerb. An AQF Level 5 Arborist has undertaken a tree root investigation within the frontage of the property and the report identifies that " There was a limited amount of tree roots growing in the front of the property". Four trenches were excavated and the following tree roots were found: Trench A has two tree roots of 30mm at a depth of 750mm; Trench B has one tree root of 20mm at a depth of 400mm; Trench C has three tree roots of up to 20mm at a depth of 900mm; Trench D has no tree roots. The report concludes that only one tree root in Trench A requires removal whilst others can be preserved, and that " if these roots were removed will have no long-term or short-term effect on the brush box growing on council land in the roadway".</p> <p>However no tree root investigation is undertaken for the existing bitumen footpath and kerb, and thus there is no evidence that significant tree roots are not located under the bitumen footpath or behind the kerb, and a site review indicates kerb movement indicative of tree root location behind the kerb. There is no support from Landscape Referral for the removal of the existing footpath for a new driveway in consideration of the importance of the the heritage item. To support the application proposal, Landscape Referral consider that the existing bitumen footpath must remain in place and vehicle access onto the property shall be gained only from a constructed layback in place of the existing kerb. This type of access to private property is evident in adjoining property No. 21 and property No. 19. Conditions shall be imposed for retention of the existing bitumen footpath and for construction kerb layback only, with the kerb layback subject to Council's Development Engineering standards.</p>
NECC (Development Engineering)	<p>Supported, subject to conditions</p> <p><u>Original Comments (19 June 2023):</u></p>

Internal Referral Body	Comments
	<p>The submitted stormwater plans propose a pump-out pit for the basement connected to an absorption trench adjacent to the proposed driveway and a second absorption trench at the rear of the building. The submitted geotechnical report recommends connection of stormwater from the site to the street drainage system. If absorption is the preferred method for the disposal of stormwater, then an infiltration test by the Geotechnical Engineer must be provided and calculations for the absorption system by the Civil Engineer. Alternatively the stormwater from the site is to be connected to the street. As the site is flood affected no OSD is required.</p> <p>The proposed driveway crossing appears to reduce the on street parking by at least one space. A review of the comments by Council's Traffic Engineer indicates that the preference is for at least one space to be maintained. In this regard it is considered that the driveway crossing be relocated to the eastern boundary to maintain the on street parking space. A review of the internal driveway grades indicates that the final transition does not comply with AS2890.1:2004. In this regard the ramp grade is to be amended to ensure the final transition is not greater than 1 in 8 for 2 metres. This will require the ramp to be extended or the basement level to be raised.</p> <p>The Geotechnical report does not appear to consider the proposed pump-out well which will be lower than the predicted water table level. In this regard, the report must be amended to include recommendations for the temporary dewatering of the site in order to construct the pump-out well and construct the tanked basement as required by the Civil Engineering plans.</p> <p>Development Engineering cannot support the proposal due to insufficient information to address stormwater disposal, vehicular access and Geotechnical risk in accordance with Clauses 3.7, 4.1.6 & 4.1.8 of the DCP.</p> <p><u>Updated Comments (7 November 2023):</u></p> <p>The revised stormwater plans have addressed the previous comments raised and the connection of stormwater to the kerb is acceptable. The proposed pump-out pit is above the water table as per the Geotechnical report advice. The revised parking space and driveway location is also acceptable.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>
NECC (Flooding)	<p>Supported, subject to conditions</p> <p>The development proposes the construction of a new three storey dwelling, pool, pool room and a basement. The proposed main</p>

Internal Referral Body	Comments			
	<p>dwelling's footprint extends to the rear of the property beyond the existing buildings footprint.</p> <p>The site is affected by the Medium - Low flood risk precinct area, 1% AEP Flood, PMF Flood and a H1-H2 Flood Hazard Category which predominantly impacts the rear of the property.</p> <p>The assessment considers the findings from the site specific Flood Management Report prepared by Northern Beaches Consulting Engineers Issue A (16 March 2023).</p> <p>The proposed development generally complies with the flood related requirements of section 5.4.3 of the Manly DCP and Clause 5.2.1 of the Warringah LEP.</p> <p>Approval is subject to development engineering assessment and approval of the proposed Stormwater system in accordance with council's DCP and LEP requirements.</p>			
NECC (Water Management)	<p>Supported, subject to conditions</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none">• Supplied plans and reports;• Northern Beaches Water Management for Development Policy (WM Policy); and• Relevant LEP and DCP clauses <p>The proposal is for the construction of a two-storey single dwelling on a lot under 1000 square metres. The proposed water treatment chain includes rainwater tank and absorption trenches.</p> <p>It is noted from the geotechnical report provided that excavation is not expected to intercept the water table. In the event that any dewatering is required then the applicant must contact catchment@northernbeaches.nsw.gov.au for advice on Council's groundwater dewatering permit prior to excavating. Approvals must be obtained from Water NSW to undertake construction if large quantities of groundwater are to be removed.</p> <p>On assessment, the proposed water treatment measures are considered acceptable provided conditions are adhered to.</p>			
Strategic and Place Planning (Heritage Officer)	<p>Supported without conditions</p> <table><tr><th>HERITAGE COMMENTS</th></tr><tr><th>Discussion of reason for referral</th></tr><tr><td><p>The proposal has been referred to Heritage as the subject site is within the vicinity of a conservation area and a number of heritage items:</p><p>C2 - Manly Town Centre Conservation Area</p><p>Item 179 - Street trees - Ashburner Street, Manly</p><p>Item 181 - 2 adjoining residential flat buildings - 37 and 41 Ashburner Street, Manly</p></td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	<p>The proposal has been referred to Heritage as the subject site is within the vicinity of a conservation area and a number of heritage items:</p> <p>C2 - Manly Town Centre Conservation Area</p> <p>Item 179 - Street trees - Ashburner Street, Manly</p> <p>Item 181 - 2 adjoining residential flat buildings - 37 and 41 Ashburner Street, Manly</p>
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<p>The proposal has been referred to Heritage as the subject site is within the vicinity of a conservation area and a number of heritage items:</p> <p>C2 - Manly Town Centre Conservation Area</p> <p>Item 179 - Street trees - Ashburner Street, Manly</p> <p>Item 181 - 2 adjoining residential flat buildings - 37 and 41 Ashburner Street, Manly</p>				

Internal Referral Body	Comments																		
	<div>Details of heritage items affected</div> <div>C2 - Manly Town Centre Conservation Area The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of Manly as a peripheral harbor and beachside village in the fledgling colony of New South Wales. This significance is enhanced by its role as a day-trip and holiday destination during those early years, continuing up to the present time, and its association with H G Smith, the original designer and developer of the TCCA as it is today. The physical elements of the TCCA reflect this early development and its continued use for recreational purposes, most notably the intact promenade quality of The Corso and its turn of the century streetscape, as well as key built elements such as hotels, and remaining original commercial and small scale residential buildings.</div> <div>Item I79 - Street trees <u>Statement of Significance</u> Aesthetic, Historic Municipal planting <u>Physical Description</u> Norfolk Island pines on west side of street only planted in carriageway.</div> <div>Item I81 - 2 adjoining residential flat buildings <u>Statement of Significance</u> Significance in contribution to streetscape, architectural detailing and association with themes listed.</div> <div>Other relevant heritage listings<table><tr><td>SEPP (Biodiversity and Conservation) 2021</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>N/A</td><td></td></tr></table></div> <div>Consideration of Application Updated plans have been received for this proposal. The dwelling has been redesigned to include a setback to the east and a pitched roof with an awning at the front. This better reflects the streetscape and Heritage no longer raise concerns around this design of the dwelling.</div>	SEPP (Biodiversity and Conservation) 2021	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No		Other	N/A	
SEPP (Biodiversity and Conservation) 2021	No																		
Australian Heritage Register	No																		
NSW State Heritage Register	No																		
National Trust of Aust (NSW) Register	No																		
RAIA Register of 20th Century Buildings of Significance	No																		
Other	N/A																		

Internal Referral Body	Comments
	<p>Heritage has concerns around the protection of the heritage listed street tree at the front of the property due to impacts from the construction of a driveway. However Landscape has provided a suitable set of amendments to delete the driveway crossover, retain the existing bitumen and construct only a new layback so as to avoid impacts to the tree. Heritage supports this approach. Heritage also supports the recommended conditions of Landscape for the amended plans, protection of the street tree and raised kerb demolition.</p> <p>Therefore Heritage raises no objections to the proposal and requires no additional conditions.</p> <p>Consider against the provisions of CL5.10 of MLEP 2013 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>
Traffic Engineer	<p>Supported, subject to conditions</p> <ul style="list-style-type: none"> • There is no traffic report provided as part of this DA. The only reference is the Statement of Environmental Effects. • The Manly DCP applies to the subject site. Under the DCP, two (2) parking spaces per dwelling are required for a dwelling house. As Two (2) parking spaces have been provided the development provides adequately for the parking needs generated by the residence. • Given that residential parking meets DCP requirements, the parking needs of residents have been adequately addressed and residents of the development will therefore not be eligible for resident parking permits. This will be conditioned. • A Turntable inside the basement level is proposed to ensure that vehicles can enter and exit in a forward direction. • The basement carpark layout and car spaces appear to be compliant with Australian Standards AS2890.1:2004 Off-Street Parking requirements. However, the driveway and the internal area have not been dimensioned on the architectural plans. The plans should be accompanied by dimensioned driveway width and internal parking area widths. This will be conditioned. • The proposed driveway will result in losing 1 (potentially 2) parking spaces on Ashburner Street, to facilitate access to on-site parking for the new dwelling. Council does not oppose the resultant loss of on-street parking space(s) given that the development is a single residence, and the provision of off-street to support the development is a DCP requirement.

Internal Referral Body	Comments
	<ul style="list-style-type: none"> It might be possible to retain one (1) on-street parking space on Ashburner Street if the driveway were shifted, however the Architectural plans does not include sufficient detail to confirm if this is the case. A detailed design of the proposed access driveway including the surrounding on-street parking spaces at the subject location will be conditioned. A swept path plot is conditioned to be provided for B99 vehicles entering/exiting the site from Ashburner Street and then entering/exiting the carpark ramp. The DCP requires bicycle parking at a rate of 1 space for every three (3) car spaces, i.e. 1 space required. Bicycle parking space is not presented in the architectural plans. This will be conditioned. the driveway and ramp gradients appear satisfactory however a vertical clearance assessment on the driveway ramp should be undertaken, using traffic engineering software such as Autotrack/Autoturn, for a B99 car entering and accessing the carpark to demonstrate that there is adequate overhead clearance and that scraping/bottoming does not occur. This will be conditioned. A pedestrian sightline triangle of 2.0 metres by 2.5 metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to ensure adequate pedestrian visibility for exiting vehicles. This will be conditioned The proposal will generate minimal traffic during the peak periods; therefore, it will not have any unacceptable implications in terms of road network capacity performance. <p><u>Assessing Officer's Comment:</u> Amended plans received 27 October 2023 remove the originally proposed basement with two parking spaces, and instead propose a single hardstand parking space in the front setback. The proposed development is acceptable in this regard, as detailed in the section of this report relating to Clause 4.1.6 Parking, Vehicular Access and Loading of the Manly Development Control Plan.</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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1408491S dated 28 July 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	80

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

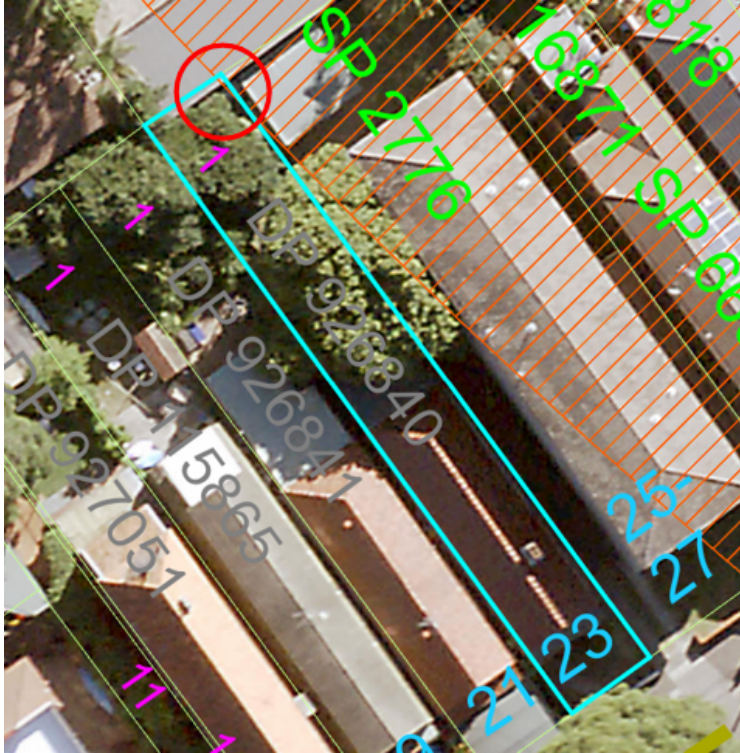
The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. A minor portion of the northern corner of the site is

classified as coastal use area as shown below, circled in red:



Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

- c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment:

The proposed development is fully located on private land, so does not cause adverse impact upon public foreshore, beach, headland or rock platform land. The proposed development does not cause adverse impact on persons with a disability as it does not alter public access. The proposed development is supported by shadow diagrams that demonstrate acceptable overshadowing impact. The proposed development is designed such that it does not increase wind funneling or unreasonably impact upon view sharing to, from, or between public or private land. The subject site is not mapped as having Aboriginal heritage significance. In this way, the proposed development is demonstrably designed, sited and will be managed to avoid adverse impact. The bulk and scale of the proposed development has been considered throughout this assessment.

Division 5 General

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

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

Comment:

The proposed development is demonstrably designed and sited so as not to cause increased risk of coastal hazard on the subject site or surrounding land.

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

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	Max. 7.9m	-	Yes
Floor Space Ratio	0.75:1 (239.1m ²)	0.69:1 (221m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

6.1 Acid sulfate soils

Clause 6.1 Acid Sulfate Soils requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works. The site is located in an area identified as Acid Sulfate Soil Class 4, as indicated on Council's Acid Sulfate Soils Planning Map. The proposed development is supported by a sufficient acid sulfate soils investigation, demonstrating that the proposed works will not result in unreasonable risk.

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.

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:

On-site stormwater retention has been incorporated into the development.

(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.

6.8 Landslide risk

The objectives of this clause are to ensure that development on land susceptible to landslide—

- (a) matches the underlying geotechnical conditions of the land, and*
- (b) is restricted on unsuitable land, and*
- (c) does not endanger life or property.*

In this regard, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account the risk of landslide—

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

Comment:

The proposed development is supported by architectural plans and a geotechnical investigation that demonstrate that the above matters have been sufficiently considered and addressed. The proposed development is not anticipated to result in increased risk of landslide.

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and that—

- (a) the development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development, or*
- (b) if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or*
- (c) if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impact.*

Comment:

Given the above, the proposed development is designed, sited and will be managed to avoid landslide risk and adverse impact.

6.9 Foreshore scenic protection area

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) measures to protect and improve scenic qualities of the coastline,*

(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,

(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

Comment:

The proposed development is designed and sited such that it does not result in detriment to the visual amenity of the harbour or foreshore. The subject site is not within the immediate vicinity of the foreshore, and is not visible from the foreshore, so does not impact upon the foreshore.

6.12 Essential services

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

(a) the supply of water,

(b) the supply of electricity,

(c) the disposal and management of sewage,

(d) stormwater drainage or on-site conservation,

(e) suitable vehicular access.

Comment:

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 318.8m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Max. 1 dwelling per 150m ²	1 dwelling on 318.8m ² site	-	Yes
	Dwelling Size: Min. 105m ²	221m ²	-	Yes
4.1.2.1 Wall Height	9m (based on flat gradient)	NE: 6.8m	-	Yes
		SW: 6.8m	-	Yes
4.1.2.2 Number of Storeys	Max. 3 Storeys	2 plus basement	-	Yes
4.1.2.3 Roof Height	Height: Max. 2.5m	1.2m	-	Yes
	Pitch: Max. 35 degrees	21.5 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line: Min. 6m	Hardstand: Nil	100%	No
		Dwelling: 6.8m	-	Yes
4.1.4.2 Side Setbacks (one third wall height)	Ground: Min. 1.4m	NE: Min. 0m	100%	No
		SW: Min. 0m	100%	No
	First: Min. 2.26m	NE: Min. 500mm	78%	No
		SW: Min. 1.1m	51.3%	No

	Windows: Min. 3m	NE: 1.1m	63.33%	No
		SW: 1.1m	63.33%	No
4.1.4.4 Rear Setbacks	Min. 8m	Pool House: 0m	100%	No
		Dwelling: 12.5m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2	Total Open Space: Min. 50% of site (159.4m ²)	41.2% (131.2m ²)	17.7%	No
	Above Ground: Max. 25% of TOS (32.8m ²)	20.1% (26.4m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped Area: Min. 30% of TOS (39.36m ²)	41.5% (54.5m ²)	-	Yes
	1 native tree	1 tree	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Max. 50% of frontage up to 6.2m	39.5% (2.4m)	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	Max. 1m above ground	0m	-	Yes
	Min. 1m to coping	Side: 0m	100%	No
		Rear: 3m	-	Yes
	Min. 1.5m to water	Side: 200mm	87%	No
		Rear: 3.2m	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	1 space	50%	No

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	No	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

The proposed development results in the loss of the midday winter sunlight to the living room windows of No. 21 Ashburner Street. This clause requires that no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified by the DCP. The objectives of the control are addressed as follows:

Objective 1) To provide equitable access to light and sunshine.

Comment:

Two above-ground storeys in a dense metropolitan area is a reasonable development outcome. It should also be noted that the controls contemplate larger development, with a permissible floor space ratio of 0.75:1 (where the proposed development includes a floor space ratio of 0.69:1) and a height of 11 metres (where the proposed development reaches only 7.9 metres). Given these factors, the proposed development is reasonable in its context with respect to overshadowing.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*

- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

Comment:

The proposed development allows for equitable sunlight to the private open space of the subject site and No. 21 Ashburner Street to the south. The impact to the living room windows of No. 21 Ashburner Street to the south is acceptable as detailed above.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

The proposed development presents a suitable design response to the restricted width of the site, and includes articulation, modulation and conservative bulk and scale.

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

The proposed development includes non-compliant setbacks, as follows:

- Front: Single hardstand parking space with a nil front setback, where 6.5 metres is required,
- Sides: Nil setback to the south-western side boundary at the ground floor, varied setbacks to the south-western side setback at the first floor, and varied setbacks to the north-eastern side boundary at the both floors, where one third of the wall height is required,
- Windows: Windows 1.1 metres from the side boundaries, where 3 metres is required, and
- Rear: Pool house immediately on the rear boundary, where 8 metres is required.

The proposed 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 subject site is situated amongst a row of dwelling houses that are set with a nil setback to the south-western side boundary and a 900mm setback to the north-eastern side boundary. The proposed development includes a replicated south-western setback to the ground floor, while also including a stepped-in courtyard feature. To the north-east, the proposed includes some elements that have a nil or less than 900mm setback. However, the proposal is designed to mimic the setback character of the set of houses, by providing a 900mm setback to the front portion of the site, and by landscaping that portion of the site. The proposed development then steps out as it nears the rear, where it is not readily visible from the street. In this way the proposed development maintains the existing spatial proportions of the street, and enhances the character by providing an updated architectural presentation for the site.

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 proposed development is compliant with the privacy requirements of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan, in that it minimises side-facing windows, and screens all but the window adjoining the upper level walkway. The proposed development allows for adequate access to light, sunshine and air for the subject site and adjoining sites, as detailed in the section of this report relating to Clause 3.4.1 Sunlight Access and Overshadowing of the Manly Development Control Plan. The proposed development does not impact upon significant views to, from or between public or private places. The proposal is designed to mimic the common setbacks along this portion of Ashburner Street, thereby continuing the street definition and character, as well as the rhythm and pattern of spaces. The proposed driveway and hardstand space are designed and located to allow for suitable vehicular and pedestrian safety.

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

Comment:

The proposed development provides for flexibility on the site by including varied setbacks with portions that are not compliant and portions that are set back much further than required by the control. The result of which is a well-designed development that minimises bulk, while allowing suitable amenity for occupants of the subject site and adjoining sites, without any unreasonable impacts.

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:

The proposed development includes landscaped area and deep soil zones in both the front and rear yards. The development maximises landscaping where it can, given the narrow width of the site. The proposed development is well under the height and maximum gross floor area allowable for the site, which demonstrates that the development is not excessive, despite the non-compliance with the setback controls. The proposed development is not located within close vicinity of any open space land, National Park land, or urban bushland.

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

Comment:

Not applicable. The subject site is not classified as bush fire prone land.

4.1.5 Open Space and Landscaping

The proposed development includes 131.2m² of landscaped open space, equating to 41.2% of the site, where 50% is required. 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 proposed development includes suitable landscaped open space and planting to support native flora and fauna, as demonstrated by the submitted landscape plan.

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 proposed development includes soft open space at the ground floor level, including the planting of a tree to replace the one removed by the development. The proposed open space and landscaping is consistent with the character of the street. The development maximises open space where it can, given the narrow width of the site. The proposed development is well under the height and maximum gross floor area allowable for the site, which demonstrates that the development is not excessive, despite the total open space non-compliance.

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

Comment:

The proposed development is designed and sited to provide a suitable amenity outcome for occupants of the subject site and adjoining sites. The proposed development allows for adequate access to light, sunshine and air for the subject site and adjoining sites, as detailed in the section of this report relating to Clause 3.4.1 Sunlight Access and Overshadowing of the Manly Development Control Plan. The proposed development is compliant with the privacy requirements of Clause 3.4.2 Privacy and Security and Clause 3.4.3 Maintenance of Views of the Manly Development Control Plan.

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

Comment:

The proposed development includes a suitable amount of porous land to assist with water infiltration on site, and is supported by sufficient stormwater management measures, as demonstrated by the supporting stormwater plans.

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

Comment:

The proposed development is supported by a landscape plan that includes suitable planting species, so as to minimise the spread of weeds.

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

Comment:

The subject site is not classified as a wildlife corridor. However, the site includes suitable landscaping to support local wildlife.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

The proposed development includes on hardstand car space in the front setback area, where two parking spaces are required by Schedule 3 of the Manly Development Control Plan. The development is considered against the underlying objectives of the control as follows:

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The proposed parking space is level on the ground with sufficient dimensions to allow for consideration of disabled access.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

The proposed driveway is designed such that a single compliant car space is retained on the street in front of the dwelling (where one such lawful space exists currently), while also providing one off-street parking space, resulting in a net increase in compliant parking.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

The proposed hardstand space is surrounded by landscaping and vegetation, so as to reduce its visual impact. The proposed parking space is located immediately at the front boundary so as to provide clear sight lines for vehicle ingress and egress, and allow for pedestrian and vehicular safety.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

The proposed single hardstand parking space does not require excavation, so does not impact upon site instability or interruption to ground water flows.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:

The proposed development includes one single-width driveway crossover of the minimum dimensions.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

The proposed hardstand space is surrounded by landscaping and vegetation, so as to reduce its visual impact and minimise onsite impervious area.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

The subject site is not located in a centre but is within close walking distance of bus services and ferries. The proposal allows for off-street parking for one car, thereby allowing a suitable balance of car and public transport use.

4.1.9 Swimming Pools, Spas and Water Features

The proposed pool is located immediately beside the north-eastern side boundary where setbacks of 1 metre to the coping and 1.5 metres to the water are required. The development is considered against the objectives of the control as follows.

Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;

Comment:

The proposed swimming pool is designed as a 'plunge pool' being 9.3 metres long and 1.5 metres wide, so is not a place of intense recreation. The proposed pool is suitably located for the purpose of acoustic and visual privacy in that it adjoins the driveway and carport of the property to the north-east. Privacy screening is proposed adjoining the pool, so as to further reduce the privacy impact of the

pool. Filter noise can be controlled by way of location (as per recommended conditions of consent).

Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;

Comment:

The proposed pool is located such that it is not visible from the street, so will not impact upon streetscape or character of the locality.

Objective 3) To integrate landscaping; and

Comment:

The proposed development includes sufficient landscaping, including in the rear yard around the pool area.

Objective 4) To become an emergency water resource in bush fire prone areas.

Comment:

Not applicable. The subject site is not classified as bush fire prone land.

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 \$23,100 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,310,000.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

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

The application has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to receipt of 10 submissions.

The concerns raised in the objections have been addressed and resolved by additional information, amended plans, and explanation throughout this report.

The critical assessment issues included front, side and rear setbacks, total open space, and the issues raised in the submissions.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/1950 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 1 DP 926840, 23 Ashburner Street, 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

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA01	C	Plant Room	Wolski Coppin	27 October 2023
DA02	C	Ground Floor	Wolski Coppin	27 October 2023
DA03	A	First Floor	Wolski Coppin	27 October 2023
DA04	A	Roof + Site Plan	Wolski Coppin	27 October 2023
DA05	C	Elevations 01	Wolski Coppin	27 October 2023
DA06	C	Elevations 02	Wolski Coppin	27 October 2023
DA07	C	Sections 01	Wolski Coppin	27 October 2023
DA08	B	Sections 02	Wolski Coppin	27 October 2023
L1	C	Landscape Concept Plan	Wallman Partners Pty Ltd	28 October 2023
2022-167-H1	C	Stormwater Drainage Basement Plan & Details	Burgess, Arnott & Grava Pty Ltd	25 October 2023
2022-167-H2	C	Stormwater Drainage Site / Ground Floor Plan & Details	Burgess, Arnott & Grava Pty Ltd	25 October 2023

2022-167-H3	C	Stormwater Drainage Level 1 / Roof Plan & Details	Burgess, Arnott & Grava Pty Ltd	25 October 2023
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Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Flood Management Report	A	NB Consulting Engineers	16 March 2023
Root Mapping Report	2023-RM027	Dr. Treegood	May 2023
BASIX Certificate No. 1351716S_02	-	Senica Consultancy Group Pty Ltd	19 June 2023
Acid Sulfate Soils Investigation Report	2023-144	Crozier Geotechnical Consultants	31 July 2023
Geotechnical Investigation	J4573	White Geotechnical Group	21 November 2022
Geotechnical Investigation Addendum	J4573A	White Geotechnical Group	27 October 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	11 April 2023

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

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

3. Prescribed Conditions

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

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

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

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

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$23,100.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$2,310,000.00.

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

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

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

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

6. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. Amended Plans

No approval is given for alteration of the existing bitumen footpath for the construction of a driveway. The existing bitumen footpath shall remain in place and may be used for vehicular access. All plans shall document a kerb layback only, in place of the existing raised kerb, and shall be detailed to satisfy Council's Development Engineering standards for the construction of a kerb layback. Details demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifier prior to the issue of the Construction Certificate.

Reason: Protection of local heritage item (i79) Brushbox street trees.

8. Heritage Listed Trees

The property frontage is adjacent to Heritage Listed Trees as identified in the Local Environmental Plan. Heritage Listed Trees are to be protected from damage during construction.

a) The following Heritage Listed Trees are located within the vicinity of the approved works:

i) *Lophostemon confertus* (Brushbox).

b) A Tree Protection Plan is to be prepared by an Arborist with minimum AQF Level 5 in arboriculture incorporating the following:

i) annotated photographs of the tree(s) trunk, branches and any exposed roots,

ii) tree protection measures in accordance with AS4970-Protection of Trees on Development Sites, including location of tree protection fencing / barriers, root protection in the form of mulching or boards proposed within the tree protection zone, trunk and branch protection within the tree protection zone, and any other general tree protection measures.

c) Prior to the issue of a Construction Certificate, the Certifier shall provide Council with the Tree Protection Plan for approval by Council.

Reason: Protection of significant community asset / local heritage item (i79).

9. Flooding

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

Flood Effects Caused by Development – A2

There is to be no filling of the land or any other reduction of the available flood storage which results in a net loss of storage below the 1% AEP flood level.

As outlined in the Flood Management Report prepared by Northern Beaches Consulting Engineers dated 16/03/2023 the following measures are to be implemented to ensure there is no net loss of storage below the 1% AEP flood level.

- o The pool room must be raised above the FPL of 4.70m AHD, with an open substructure as to not impede the flow of flood waters.
- o To offset flood storage area losses the external rear landscaping must be lowered by 100mm below the existing NGL.
- o The proposed pool coping is to be flush with the adjacent natural ground level and the section of wall running adjacent to the pool must be removed, or open to RL 4.70m AHD as to not impede the flow of floodwaters.

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

Building Components and Structural Soundness – B1

All new development below the Flood Planning Level as determined in the Flood Management Report prepared by Northern Beaches Consulting Engineers dated 16/03/2023 shall be

designed and constructed as flood compatible materials.

Building Components and Structural Soundness – B3

All new electrical equipment, power points, wiring and connections must be waterproofed and/or located above the Flood Planning Level as determined in the Flood Management Report prepared by Northern Beaches Consulting Engineers dated 16/03/2023.

Floor Levels – C1

New floor levels within the development shall be set at or above the Flood Planning Level of 4.70m AHD.

Car parking – D6

All access, ventilation and any other potential water entry points to the basement garage, shall be at or above the Flood Planning Level as outlined in the Flood Management Report prepared by Northern Beaches Consulting Engineers dated 16/03/2023 the following measures are to be implemented to protect the basement garage from floodwaters.

- Flood walls are to be constructed to the adopted FPL (4.15m AHD) and must be implemented along both edges of the driveway, to protect the basement from flood waters.
- A driveway crest to protect the basement garage must be constructed to 4.15m AHD to protect the basement garage.
- The proposed external staircase to the basement level must be raised to RL 4.70m AHD and have surrounding flood walls constructed to 4.70m AHD to protect the basement from flood waters. Details for this must coordinated prior to construction.

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

Fencing – F1

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 along any straight length, from the natural ground level up to the 1% AEP flood level. Openings shall be a minimum of 75mm x 75mm. Details demonstrating compliance are to be submitted to the Principal Certifier for approval.

Storage of Goods – G1

Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level of 4.70m 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.

Pools - H1

The pool's coping is to be flush with the natural ground level.

All electrical equipment associated with the pool (including pool pumps) are to be waterproofed and/or located at or above the Flood Planning Level or adequately protected from floodwaters

Pool fencing 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 of 4.33m AHD.

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

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 Ashburner Street.

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

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans and associated documentation.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

12. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Standard Drawing Normal Profile 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. **Erosion and Sediment Control Plan**

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

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)

- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

14. **Stormwater Treatment Measures - Minor**

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

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

Reason: Protection of the receiving environment.

15. **Vehicular Swept Paths**

Vehicular manoeuvring paths must be provided to demonstrate that access to parking spaces is possible as required by Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

- Swept path plots are to be provided for B99 vehicles entering/exiting the site from Ashburner Street, showing the surrounding on-street parking spaces at the proposed access driveway.

Details demonstrating compliance with this condition must be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

16. **Construction Traffic Management Plan**

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

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

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase

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

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

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

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

17. Vehicle Access & Parking

All internal driveways, vehicle turning areas, and vehicle parking spaces dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Off-street Parking standards). With respect to this, the following revision(s) must be undertaken to the parking allocation:

- Dimensioned plans to be submitted for the parking area including the driveway width to confirm that the parking bay and the driveway are appropriately sized.
- A detailed design of the proposed access driveway showing distances to adjacent driveways at the subject location must be provided with the location/width of the driveway adjusted to retain an on-street parking space on the site frontage, if feasible.
- A minimum of one (1) bicycle parking space should be provided and shown on the Architectural Plans to promote sustainable transport mode options for journeys to and from the site.

These amendment(s) must be clearly marked on the plans submitted to the Certifier prior to the issue of a Construction Certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicle.

18. Pedestrian sight distance at property boundary

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

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

Reason: To maintain pedestrian safety.

19. Installation and Maintenance of Sediment Control

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

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 ensure no substance other than rainwater enters the stormwater system and

waterways.

20. **Tanking of Basement Level**

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

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

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

21. **Structural Adequacy and Excavation Work**

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

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

Reason: To provide public and private safety.

22. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

23. **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.

24. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS 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 additionally:

- a) during demolition of the existing raised kerb near the heritage listed Brushbox street tree.

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: Street tree protection.

26. **Tree Removal Within the Property**

This consent approves the removal of existing tree on the subject site as identified in the approved Plans, or as listed below:

- a) Glochidion ferdinandi at rear of property,
- 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 and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

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

DURING BUILDING WORK

28. Protection of Existing Street Trees

All existing street trees (heritage and non-heritage) in the vicinity of the works shall be retained during all construction stages, and the street tree fronting the development site shall be protected in accordance with the approved Tree Protection Plan and Section 4 of AS4970-2009 Protection of trees on development sites.

All street trees within the road verge are protected under Northern Beaches Council development control plans. 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 and local heritage item (i79).

29. Tree and Vegetation Protection

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

- i) all trees and vegetation located on adjoining properties,
- ii) all 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 complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

30. **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.

31. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

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

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

Reason: Protection of the receiving environment.

32. **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.

33. **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.

34. Survey Certificate

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

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

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

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

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

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

35. Demolition of existing raised kerb

The Project Arborist shall be in attendance during demolition of the existing raised kerb near the heritage listed Brushbox street tree. Council shall review the existing tree roots present following demolition and shall recommend any arboricultural works required for the construction of the kerb layback to preserve the Brushbox.

Reason: Street tree protection and local heritage item (i79).

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**36. Landscape Completion**

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

- a) landscape works are to be contained within the legal property boundaries,
- b) one locally native tree selected from Northern Beaches Council's Native Plant Species Guide - Manly Ward, Manly DCP Schedule 4 - Part B - Native Tree Selection, shall be installed within the rear of the property, at a minimum pre-ordered planting size of 75 litres; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- c) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

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

Reason: Environmental amenity.

37. Condition of Retained Vegetation

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

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

Reason: Tree and vegetation protection.

38. 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.

39. Certification of Works as Executed

A suitably qualified engineer and/or registered surveyor is to certify that the completed works have been constructed in accordance with this consent and the approved plans with respect to the following:

1. Floor levels for ground floor are set at or above the required level.
2. All access, ventilation, driveway crests flood walls and any other potential water entry points to the basement car park have been set at or above the required level
3. There has been no filling on the land other than what has been approved & the rear landscaping is set 100mm lower than the existing NGL.
4. Openings are provided under floor areas where required for the free passage of flood waters
5. Openings are provided in fencing where required for the free passage of flood waters

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.

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

40. Landscape Maintenance

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

The approved landscape planted areas consisting of lawn, planting at grade, planting on structure shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

41. Flood ManagementFlood Effects Caused by Development – A2

There shall be no filling of the land below the 1% AEP flood level of 4.33 m AHD, blocking of areas required by DA consent to be left open, or any other obstruction of flow paths through the property.

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.

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.

42. Maintenance of Stormwater Treatment Measures - Minor

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

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

Reason: Protection of the receiving environment.

43. Swimming Pool/Spa Motor Noise

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

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

44. Studio/Pool room

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house or pool house for the purpose of a secondary dwelling or separate occupancy. The studio/pool room shall be consistent with the following:

detached studio means a habitable building that is used for purposes ancillary to a dwelling house such as a home office, entertainment area, art studio or guest room and—

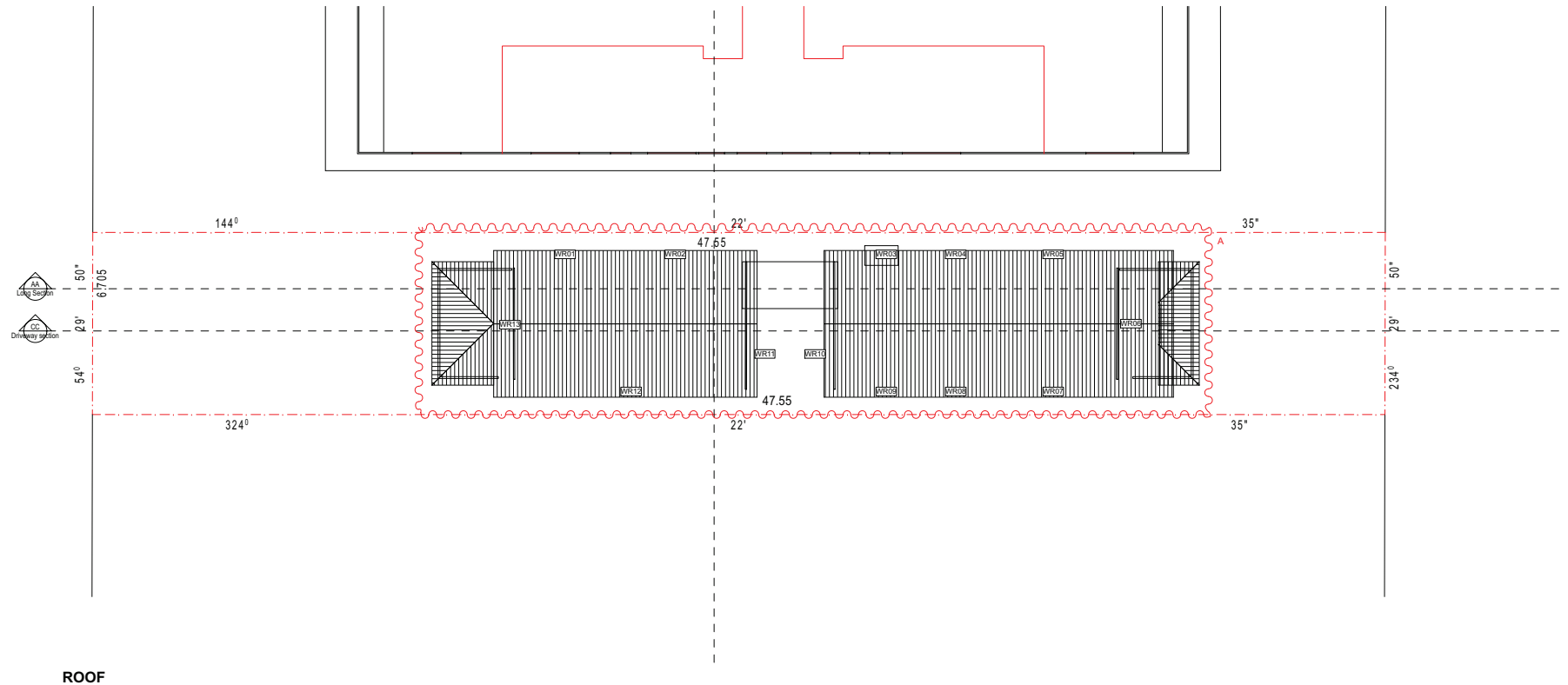
- (a) is established in conjunction with a dwelling house, and
- (b) is on the same lot of land as the dwelling house, and
- (c) is separate from the dwelling house, and
- (d) is not used as a separate dwelling house, and
- (e) does not contain any cooking facilities.

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

45. **Resident Parking Permits**

Any residents and/or tenants of the subject site are not eligible for resident parking permits even if they reside in a Permit Parking Scheme area. This condition is to be provided on the property Title.

Reason: to encourage sustainable transport alternatives and ensure that residents/tenants are aware that they are not entitled to a permit



NOTES:

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REVISIONS:

DATE	REV	DESCRIPTION
27.09.23	A	AMENDED PLAN TO REFLECT COUNCIL COMMENTS

PROJECT TITLE:

**Residential
Development**
23 Ashburner Street
MANLY

CLIENT:

**Jane Hughes &
Michael Harvey**

ARCHITECT:

WOLSKI . COPPIN
ARCHITECTURE
SUITE 3, LEVEL 1, 507 MILITARY ROAD, MOSMANN NSW 2088
T: 9953 8477 E: info@wolski-coppin.com.au
DAVID WOLSKI NSW AIB No. 5297

DRAWING TITLE:

**ROOF + SITE
PLAN**

DRAWING No:

DA04

PROJECT No:

22202

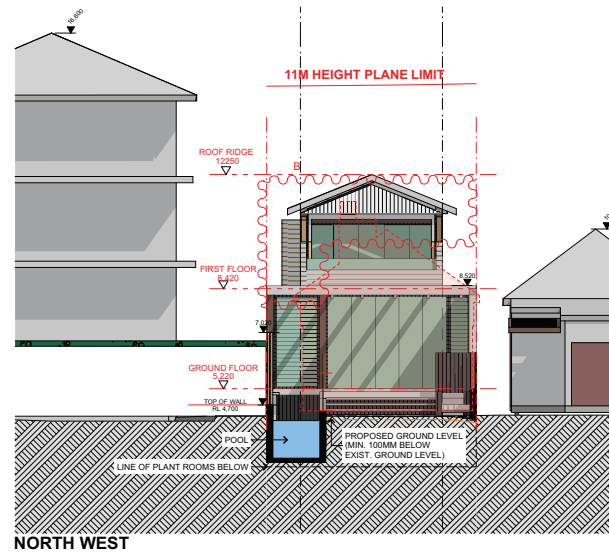
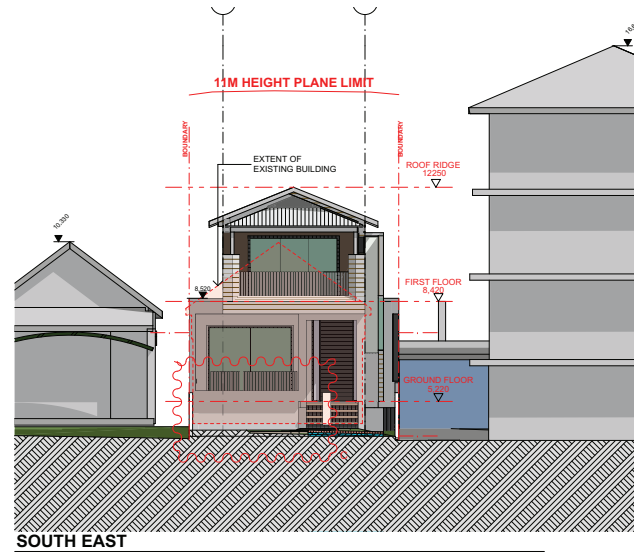
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SCALE:
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DATE:
27/10/2023



NOTES:

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REVISIONS:

DATE	REV	DESCRIPTION
17.03.23	A	DRAWINGS AMENDED TO REFLECT FLOOD REPORT
27.09.23	B	AMENDED PLAN TO REFLECT COUNCIL COMMENTS
20.10.23	C	BASEMENT CAR PARK DELETED + EXCAVATION AREA REDUCED

PROJECT TITLE:

**Residential
Development**
23 Ashburner Street
MANLY

CLIENT:

**Jane Hughes &
Michael Harvey**

ARCHITECT:

WOLSKI . COPPIN
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T: 9953 8477 E: info@wolskicoppin.com.au
DAVID WOLSKI NSW ARB No. 5297

DRAWING TITLE:

ELEVATIONS

DRAWING No:

DA05

PROJECT No:

|22202

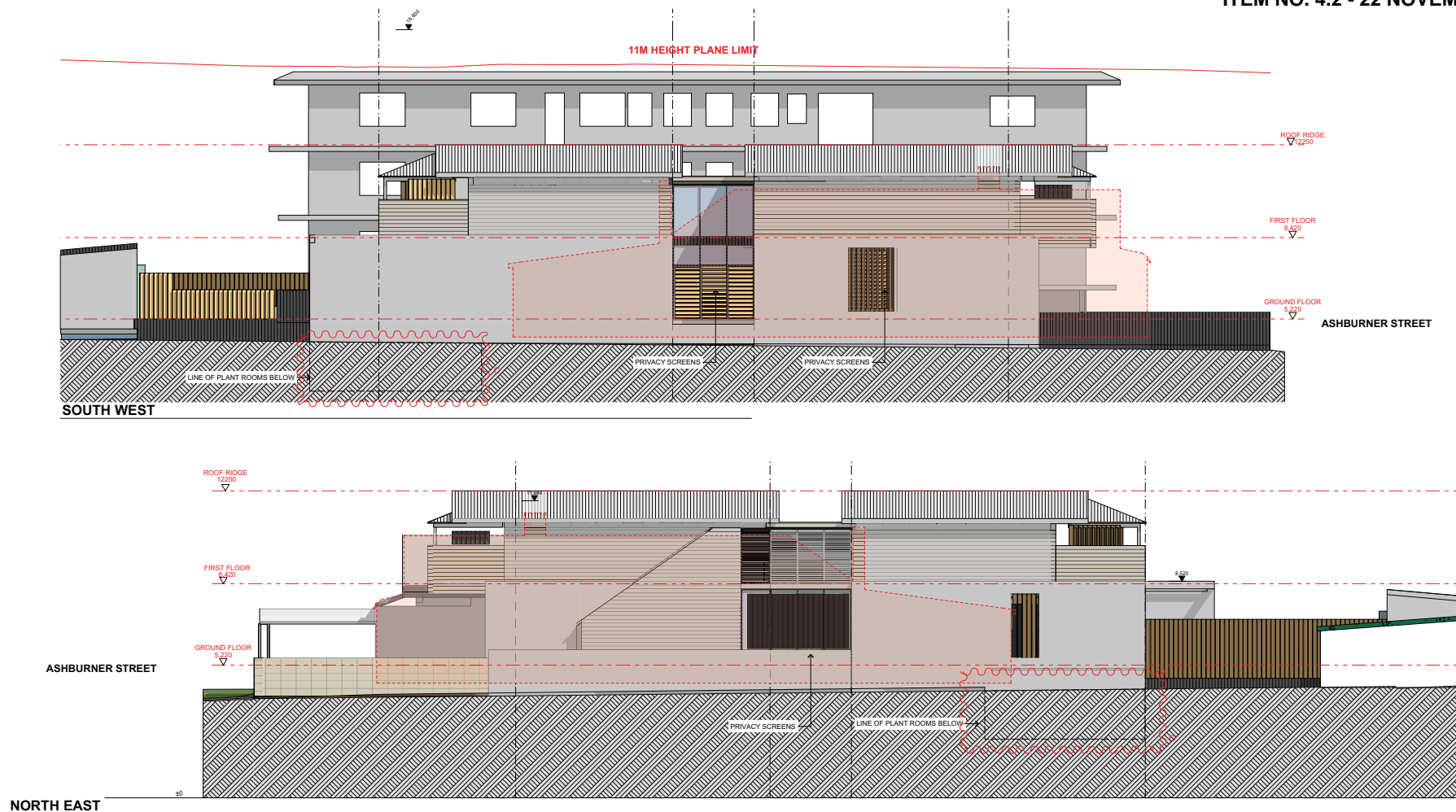
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REVISIONS:

DATE	REV	DESCRIPTION
17.03.23	A	DRAWINGS AMENDED TO REFLECT FLOOD REPORT
27.09.23	B	AMENDED PLAN TO REFLECT COUNCIL COMMENTS
20.10.23	C	BASEMENT CAR PARK DELETED + EXCAVATION AREA REDUCED

PROJECT TITLE:

**Residential
Development**
23 Ashburner Street
MANLY

CLIENT:

**Jane Hughes &
Michael Harvey**

ARCHITECT:

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DAVID WOLSKI NSW AIB No. 5297

DRAWING TITLE:

**ELEVATIONS
02**

DRAWING No:
DA06

PROJECT No:
22202

REVISION:
C

NORTH POINT:

SCALE:
1:100 @ A2

DATE:
27/10/2023

ITEM 4.3

**DA2023/0067 - 79 ASHWORTH AVENUE, BELROSE -
DEMOLITION WORKS AND SUBDIVISION OF ONE (1) LOT
INTO TWO (2) LOTS**

AUTHORISING MANAGER Rod Piggott

TRIM FILE REF 2023/732932

ATTACHMENTS

- 1 [Assessment Report](#)
- 2 [Site Plan](#)
- 3 [Clause 4.6](#)

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2023/0067 for the Demolition works and subdivision of one (1) lot into two (2) lots on land at Lot 1 DP 232410, 79 Ashworth Avenue, BELROSE for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0067
Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 1 DP 232410, 79 Ashworth Avenue BELROSE NSW 2085
Proposed Development:	Demolition works and subdivision of one (1) lot into two (2) lots
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Concetta Mastroianni Gianluca Marcello Mastroianni Cesare Mastroianni
Applicant:	Gianluca Marcello Mastroianni
Application Lodged:	21/02/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	27/02/2023 to 13/03/2023
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.1 Minimum subdivision lot size: Lot 1 - 20.7% Lot 2 - 14%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 60,500.00

EXECUTIVE SUMMARY

This development application seeks consent for demolition of a dwelling house and subdivision of land for 2 residential lots, including ancillary site works.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to variation to the minimum lot size of more than 10% (below 600sqm). The variation to proposed Lot 1 is 20.7% (to 475.58sqm) and for proposed Lot 2 is 14% (to 516.0sqm)

Concerns raised in the objections predominantly relate to stormwater and possible asbestos in the existing dwelling. Stormwater matter have not been resolved due to insufficient information. Council has permitted adequate time for additional information during the assessment period.

Critical assessment issues included the extent of variation sought pursuant to Clause 4.6 of the Warrigah Local Environmental Plan 2011 in context with the prevailing subdivision pattern that is generally Lots more than 600sqm. The proposal is inconsistent with the established character of the area and holding pattern and will create an unfavourable precedent.

Insufficeint planning grounds have been provided to support the variation and it has not been established that the proposed lots can be developed in compliance with the Development Control Plan for the purpose of the intended future land use of the subdivision.

This report concludes with a recommendation that the NBLPP refuse to the development application for the reasons provided.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for a two (2) lot residential subdivision, including demolition and site preparation works.

The existing (parent) lot is 1,094 square metres (sqm) and the subdivision seeks to create:

- Proposed Lot 1 - battle axe allotment of **516**sqm (excluding shared access Right of Way)
- Proposed Lot 2 - front allotment (Ashworth Avenue) of 582sqm including the shared access Right of Way. The area of proposed Lot 2 without the access corridor is **475.58**sqm
- Service connections and ancillary site works.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.1 Minimum subdivision lot size
 Warringah Local Environmental Plan 2011 - Part 1 Preliminary
 Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks
 Warringah Development Control Plan - A.5 Objectives
 Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - C1 Subdivision
 Warringah Development Control Plan - C2 Traffic, Access and Safety
 Warringah Development Control Plan - C3 Parking Facilities
 Warringah Development Control Plan - C4 Stormwater
 Warringah Development Control Plan - D6 Access to Sunlight
 Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 1 DP 232410 , 79 Ashworth Avenue BELROSE NSW 2085
Detailed Site Description:	<p>The site is located on the southern side of Ashworth Avenue and slopes gently away from the street toward the rear. The land contains a single storey brick dwelling house built in the late 1960's. The property is landscaped and fenced with an open rear yard area and low retaining wall across the site near the back of the existing house. The "parent" lot for the proposed subdivision site is 1,094sqm.</p> <p>There is an Easement to drain water 1.22 metres (m) wide at the rear of the property. Surrounding land uses primarily consist of low scale residential development with varying lot sizes. Most residential lots in the vicinity of the site along Ashworth Avenue are more than 600sqm.</p> <p>The site is within walking distance of Glenrose Village Shopping Centre and Kambora Public School. The site is not subject to bushfire hazard.</p>

Map:



SITE HISTORY

Building Application No.B866/67 for a brick veneer dwelling was approved by Council in 1967.

Building Application No.B380/75 for a timber additions was approved by Council in 1975.

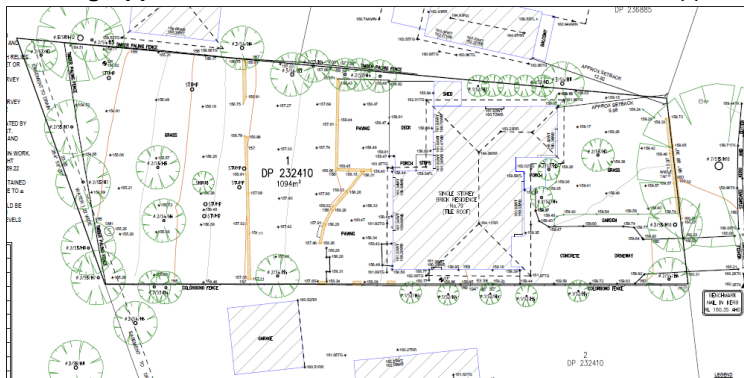


Image: Existing built structures on the site consistent with development approvals.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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&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>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to engineering and stormwater details, survey information and demonstrating building envelope compliance with the DCP. The amended details only seek to outline conceptual information for the proposed use of the land for residential purposes. The proposal is for land subdivision and demolition / site preparation works only. The supplementary information does not require re-notification pursuant to the Community Participation Plan</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter is suitable to be addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter is suitable to be addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter is suitable to be addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and	<p>(i) Environmental Impact</p> <p>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 built</p>

Section 4.15 Matters for Consideration	Comments
built environment and social and economic impacts in the locality	<p>form controls applicable under the WDCP for subdivision and future development of a house cannot be fully complied with. The area of two Lots are too small to be developed in accordance (in compliance) with the DCP for the intended residential use.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development for the reasons provided within this report, including non-compliance and variations (including subdivision minimum requirements) that is substantially below the established lot size in the vicinity of the site in Ashworth Avenue. The proposal has been submitted with a landslip assessment prepared by <i>STS Geotechnics</i> addressing clause E10 of the WDCP.
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 requirement(s) of the WLEP and WDCP and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

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 27/02/2023 to 13/03/2023 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 2 submission/s from:

Name:	Address:
Mr Denis Stanley Moore	10 Borgnis Street DAVIDSON NSW 2085
Pili De La Viuda	77 Ashworth Avenue BELROSE NSW 2085

The following issues were raised in the submissions:

- Stormwater runoff
- Asbestos

The above issues are addressed as follows:

- 1. *The submissions raised concerns stormwater runoff will impact adjacent land in Bornis Street (downslope) and adequate pipe and pit catchments must be provided to prevent nuisance runoff.*

Comment:

Councils development engineers do not support approval of the proposal due to inadequate stormwater information. This warrants refusal of the application.

- 2. *The submissions raised concerns that asbestos may be present in the existing dwelling and demolition will require any asbestos to be appropriately disposed and contained.*

Comment:

This issue is subject to State and National laws for the safe handling and disposal of asbestos. Suitable conditions may be applied including compliance with Australian Standards for demolition.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Supported with conditions.</p> <p>The application seeks consent for demolition works and subdivision of one (1) lot into two (2) lots.</p> <p>The plans and SEE indicate that no trees are to be removed to accommodate the demolition/subdivision works.</p> <p>Existing trees are to be retained with assessment of impacts at time of development if the sub-division is to be approved.</p> <p>No objections with regard to landscape issues subject to conditions.</p>

Internal Referral Body	Comments
NECC (Development Engineering)	<p>Not supported - Insufficient information.</p> <p>The following amendments are required to submitted engineering/ survey plans:</p> <ol style="list-style-type: none"> 1. The intent of the subdivision. The Master Set Plan, SoEE and stormwater plans appear to show the internal driveway as a separate lot. Amended plans need to show the internal driveway as either part of Lot 2 and included in the proposed area of Lot 2 or part of Lot 1 and a Right of Carriageway for Lot 2. Please note that only one access driveway/ vehicle crossing over Council footpath will be permitted. 2. Provide a draft Plan of Subdivision by a registered surveyor with re-submission. Include all proposed easements and rights of carriageway. <p>Engineering Comments 29.08.23 Provide evidence of existence of stormwater infrastructure (pipe) within the easement. Provide evidence of legal point of discharge from easement pipe. Show on amended plans. Produce longitudinal section of pipe through easement. Work is to be undertaken by a registered surveyor</p> <p>Engineering Comments 03.11.23 The previous development engineering comments have not been addressed. Amended plans need to: Provide evidence of existence of stormwater infrastructure (pipe) within the easement labelled as (D) on draft subdivision plans (30.08.23) Provide evidence of legal point of discharge from easement pipe. Show on amended plans. Produce longitudinal section of pipe through easement. Work is to be undertaken by a registered surveyor</p> <p><u>Planning Comment</u> Following request for the information the required engineering information has not been submitted, as per 28.9.2023 comments, to the satisfaction of Council's Development Engineer. Therefore, the proposal is not supported by development engineering as per comments dated 3.11.2023</p>
NECC (Water Management)	<p>Not supported - Insufficient information</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WM Policy); and • Relevant LEP and DCP clauses <p>The Northern Beaches Water Management for Development Policy is defining the water quality targets for subdivision.</p>

Internal Referral Body	Comments
	<p>The proposed subdivision documentation is showing a total impervious area greater than 40% with the relevant water quality objectives summarised on table 4 of the WM policy. Alternatively the impervious area can be reduced (permeable pavement, reduction of hard surfaces,...) to below 40% and minimise the requirement to a sediment pit for each individual lot. A note stating the required water quality targets is to be added to the stormwater plan.</p> <p><u>Planning Comment</u> The above information has not been recieved with stormwater engineering information required.</p>
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported with conditions.</p> <p>The proposal was referred to Ausgrid who provided a response on 14.3.2023 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

BASIX requirements are not applicable since no dwelling construction is proposed with the application.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

Other Service Authorities

The proposal does not require referral to Transport NSW (formerly RMS) and no other Service Infrastructure Authority referral issues are raised pursuant to the SEPP. *Sydney Water* requirements (for subdivision - Section 73 certificates) are administered directly by *Sydney Water* in managing water connections and sewer assets.

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

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?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	600sqm (excluding any right of way or access handle)	Lot 1: 475.58sqm (with RoW 582sqm)	20.7% (124.42sqm)	No No



Image: Proposed subdivision arrangement, including access RoW, easements and building envelope.

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	No
2.6 Subdivision - consent requirements	Yes
2.7 Demolition requires consent	Yes
4.1 Minimum subdivision lot size	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Part 1 Preliminary

The WLEP contains detailed objectives including broad land use objectives and more specific

objectives. The specific objectives to residential development are addressed as follows:

in relation to residential development, to:

- (i) protect and enhance the residential use and amenity of existing residential environments, and*
- (ii) promote development that is compatible with neighbouring development in terms of bulk, scale and appearance, and*
- (iii) increase the availability and variety of dwellings to enable population growth without having adverse effects on the character and amenity of Warringah,*

Comment

- The proposal results in significantly reduced lot areas below the minimum 600sqm subdivision requirement. This results in narrow (proposed) rear setbacks (partly non-compliant on each lot) for the proposed housing footprints and additional development intensity of the land that does not *protect and enhance* the amenity of the surrounding residential environment.
- The increased density contributes to impacts of bulk and scale toward adjacent land due to the likely need for two storey built detached housing form on the undersized lots.
- The character of the surrounding area in the vicinity of the site, particularly Ashworth Avenue is dominated by lots that are 600sqm or more. The proposal sets an undesirable precedent by the significant site variation for subdivision to small lots detracting from the original established subdivision pattern.
- The proposal is not inconsistent with the other elements of Clause 1.2 (e), (g) and (h). Subclause (f) is subject to detailed design consideration by separate development application.

Zone R2 Low Density Residential

Assessment against the objective of the Zone is provided as follows:

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

Comment

The proposal is for housing within a low density environment but seeks to reduce that density concentration beyond the minimum density permitted.

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

Comment

The proposal does not involve any other land uses.

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

Comment

The proposal seeks to reduce the minimum lot size and in-fill existing landscape open space for development by subdivision that currently forms the back yard of the parent lot. The land does not have adequate site area to achieve compliance with 600sqm site area and therefore is not consistent with maintaining the established landscape setting and harmony of the surrounding natural environment. The characterised setting will be for increased density of dwellings that will be more

dominant than if allocated (subdivided) as compliant 600sqm lots (or larger lots as per surrounding land that are generally 670sqm to 1284sqm for adjoining or adjacent land).

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Minimum Subdivision Lot Size
Requirement:	600sqm
Proposed:	Lot 1* - 475.58sqm Lot 2 - 516.0sqm
Percentage variation to requirement:	Lot 1 - 20.7% (124.42sqm) Lot 2 - 14% (84sqm)

*Lot 1 including the right of way access area is 582.0sqm (3% variation). Areas are from Survey Plan. (minor difference of <1sqm in SEE)

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.1 - Minimum subdivision lot size development standard is not expressly excluded from the operation of this clause.

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

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

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

(a) the consent authority is satisfied that:

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

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

(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

The Applicant's written request has not demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

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

The applicants (summarised) written request argues, in part:

- *Established in Wehbe v Pittwater [2007] the applicant relies on the reasoning of the relevance of the 5 ways outlined (commonly the first and second "way").*
- *The proposal protect the residential character by co-locating the driveway, including landscaped setbacks and building envelopes*
- *The proposal is consistent with the pattern and configuration (battle axe) of surrounding development.*
- *Building envelopes can be applied to achieve an enhanced environmental outcome*
- *Lot 2 will not appear dominant to the streetscape*
- *The site is not in an area of environmental significance*
- *No bushland or individual trees will be affected*
- *Natural landscape setting will be maintained that allow for screen planting.*
- *Appropriate stormwater arranged has been designed.*

Planning comment:

The WLEP states that

(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the lot size Map in relation to that land.

(3A) For the purposes of subclause (3), in calculating the size of a lot the area of any access corridor (including any right of carriageway, access way or other area that provides for vehicle access) is to be excluded, whether the access corridor is to be created or is in existence at the time of the application for development consent for the subdivision.

- In this instance the minimum lot size that applies is 600sqm. The parent lot is 1094.0sqm and would practically need 1,305sqm to facilitate the subdivision to comply since a 30m x 3.5m access handle will 'remove' 105sqm, assuming sufficient width and depth dimensions are available to achieve the other built form / subdivision requirements.
- Therefore, the proposal starts from a baseline site area that is already 16.1% less than what the site area should be to create 2 new compliant minimum size lots.
- The holding pattern in the area has limited evidence of undersized subdivisions along Ashworth Avenue or in nearby streets (in the surrounding visual catchment). The two lot subdivision will appear as higher density precedent due to the closer arrangement of 2 x 2 storey dwellings on

the site.

- The land is currently utilised to its potential as a dwelling. Additionally ancillary development may occur on the site (outbuildings, pool, sheds) that characterise low density area. The reduced site area "compresses" the development concentration which in turn impacts spatial separation (detracting on low density amenity) for surrounding land by reducing the permitted lot size.

In this regard, the applicant's written request has not demonstrated that the proposed development is not an orderly re-development of the land, and that subdivision will derogate the established low density holding pattern, predominantly above 600sqm Lots in the surrounding area of Ashworth Avenue that will not protect and improve the long term urban amenity of the surrounding built environment, therefore not satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Minimum subdivision lot size development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.1 – 'Minimum subdivision lot size' of the WLEP 2011 are:

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

(a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality.

Comment:

The surrounding area within Belrose is dominated by lots that are 600sqm or larger. Adjoining battle axe allotments and all adjacent lots exceed the 600sqm up to nearly 1,200 sqm. The average lot size of residential properties within 40m of the site, (being 18 closest residential lots), have an average lot size of 842sqm (excluding area for access handles). This demonstrates that the proposed lots are 43.5% to 38.7% smaller than the average size of lots in the vicinity.

The residential character is for lots to be larger than the minimum area, including battle axe shaped lots.

(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development.

Comment:

This clause is not relevant as the land is not commercial or industrial.

(c) to protect the integrity of land holding patterns in rural localities against fragmentation.

Comment:

The site is not a rural locality.

(d) to achieve low intensity of land use in localities of environmental significance.

Comment:

The land is not in a place of environmental significance (such as habitat, coastal, heritage or the like)

(e) to provide for appropriate bush fire protection measures on land that has an interface to bushland.

Comment:

The site is not bushfire prone.

(f) to protect and enhance existing remnant bushland.

Comment:

There is not remnant bushland areas on the site.

(g) to retain and protect existing significant natural landscape features.

Comment:

The site has not significant landscape features on the land.

(h) to manage biodiversity.

Comment:

The site has not significant biodiversity habitat.

(i) to provide for appropriate stormwater management and sewer infrastructure.

Comment:

The applicant has not addressed stormwater management requirements to the satisfaction of Council's Development Engineering and Water Management (water quality) policy. (Sewer infrastructure is managed under separate process by Sydney Water)

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

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

Comment

The proposal is for housing within a low density environment but seeks to reduce that density concentration beyond the minimum density permitted.

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

Comment

The proposal does not involve any other land uses.

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

Comment

The proposal seeks to reduce the minimum lot size and in-fill existing landscape open space for development by subdivision that currently forms the back yard of the parent lot. The land does not have adequate site area to achieve compliance with 600sqm site area and therefore is not consistent with maintaining the established landscape setting and harmony of the surrounding natural environment. The characterised setting will be for increased density of dwelling that will be more dominant than if allocated compliant 600sqm lots (or larger lots as per surrounding land).

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent 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 Minimum Subdivision Lot Size Development Standard can not be assumed.

6.2 Earthworks

No significant earthworks are proposed for the development in preparation of the site only requires clearing of structures and service connections including accessway. The land is not steep and does not require deep cut or fill for access. The proposal is consistent with the objectives of this clause.

Warringah Development Control Plan

Built Form Controls

Proposed Lot 1

Built Form Control (Demonstrated by indicative building envelope diagrams)	Requirement	Proposed (Indicative)	% Variation*	Complies
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Lot width	13m	17.07m (including 3.5m shared RoW)	N/A	Yes
Lot depth	27m	30.4m - 32m	N/A	Yes
Access width 3.5m plus 0.5m for services Max 30m without passing bay	4.0m	3.525m including services 30.4m		No No
Building envelope area	150sqm	179sqm	N/A	Yes
Private Open Space area	60sqm 5m min dimension) usable area	60sqm >5m dimension	N/A	Yes
B1 Wall height*	7.2m	Max 7.2m	N/A	Yes
B3 Side Boundary Envelope	4m/5m	Within envelope	N/A	Yes
	4m/5m	Within envelope	N/A	Yes
B5 Side Boundary Setbacks	0.9m	2.0m	N/A	Yes
	0.9m	3.5m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	6.6m	N/A	Yes
B9 Rear Boundary Setbacks	6.0m	3.1m - 11.2m	48%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	% 291sqm	N/A	Yes

*Maximum WLEP Building height also applies as 8.5m which a future dwelling can achieve on the site.

Proposed Lot 2

Built Form Control	Requirement	Proposed (Indicative)	% Variation*	Complies
Lot width	13m	20.6m	N/A	Yes
Lot depth	27m	22.9m - 27.7m		No
Access width 3.5m plus 0.5m for services	4.0m	3.525m including services 30.4m		No
Maximum 30.4 without passing bay	30m			No
Building envelope area	150sqm	159sqm	N/A	Yes
Private Open Space area	60sqm 5m min dimension) usable area	60sqm >5m dimension	N/A	Yes
B1 Wall height*	7.2m	Max 7.2m	N/A	Yes
B3 Side Boundary Envelope	4m/5m	Within envelope	N/A	Yes

	4m/5m	Within envelope	N/A	Yes
B5 Side Boundary Setbacks	0.9m	2.0m	N/A	Yes
	0.9m	6.4m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	2.0m	66%	No
B9 Rear Boundary Setbacks	6.0m	4.99m - 7.5m	16.8%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	% 277sqm	N/A	Yes

*Maximum WLEP Building height also applies as 8.5m which a future dwelling can achieve on the site. The above built form control compliance and non-compliance are indicative only base on proposed building envelope and concept build-to drawings. Any dwelling house would be subject to custom design to meet DCP compliance.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C1 Subdivision	No	No
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	No	No
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D6 Access to Sunlight	No	No
D9 Building Bulk	Yes	Yes
D14 Site Facilities	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

A.5 Objectives

The Warringah DCP objectives are:

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

Planning comment:

- The proposal impact the spatial characteristics and qualities surrounding land by the non-compliant density that reduces the minimum lot size well below 600sqm site area. The proposal is therefore inconsistent with the DCP and does not demonstrate that it can comply with the development controls that apply for a future dwelling house. This include solar access, setbacks and the like that assist to achieve desirable low density outcomes for the residential environment.
- The proposal is not within a commercial or industrial environment.
- The proposal maintains reliance on existing vehicle access as per low density residential.
- The proposal is not in a high biodiversity or ecological or coastal scenic area.
- The variation proposed will set a precedent that is not sustainable in fragmenting other similar sized lots in the local area.

B1 Wall Heights

No detailed dwelling house design or construction is proposed, however the applicant has demonstrated that both proposed Lots can achieve a dwelling with a compliant wall height based on an appropriate design pursuant to the DCP.

B3 Side Boundary Envelope

No detailed dwelling house designs are proposed, however the applicant has demonstrated that both proposed Lots can achieve a dwelling house with compliant building side boundary envelope based on an appropriate design response (and building wall setback / shape / roof profile as indicated in 3D concept) pursuant to the DCP.

B5 Side Boundary Setbacks

No dwelling is proposed, however the applicant has demonstrated that both proposed Lots can achieve a dwelling with compliant side boundary setbacks based on an appropriate design response (and subject to building position / wall articulation as shown in concept 3D outline) pursuant to the DCP.

B7 Front Boundary Setbacks

The objective of this control are:

- *To create a sense of openness.*
- *To maintain the visual continuity and pattern of buildings and landscape elements.*
- *To protect and enhance the visual quality of streetscapes and public spaces.*
- *To achieve reasonable view sharing.*

Planning Comment:

- No dwelling house is proposed, however the applicant has demonstrated that proposed Lot 1 can achieve a dwelling with compliant front setback to Ashworth Avenue based on an appropriate design response (and building envelope position as shown) pursuant to the DCP.
- For proposed Lot 2 the applicant has shown a 2m setback to the northern (front) boundary, however this is a battle axe shaped lot. Lot 2 does not have sufficient depth to achieve a 6m front setback and 6.5m rear setback, with a 150sqm building platform. A 600sqm Lot at the rear may be able to achieve this but most battle axe lots in the vicinity do not have a 6.5m and a 6.0m setback at the front and rear of the dwelling. Therefore a reduced setback to the rear lot 2 is consistent with the pattern of development on surrounding battle axe lots.
- The applicant has shown a 2m Northern setback for Lot 2 with enables this space to be landscaped (and included as landscape open space). The proposal is not in a location that has coastal or significant iconic views.
- The proposal is consistent with the front setback control of the DCP and pattern of development fronting Ashworth Avenue. The front (north) setback for proposed Lot 2 is acceptable for a battle axe lot and the pattern of surrounding development.

B9 Rear Boundary Setbacks

The objective of this control are:

- *To ensure opportunities for deep soil landscape areas are maintained.*
- *To create a sense of openness in rear yards.*
- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*
- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*
- *To provide opportunities to maintain privacy between dwellings.*

Planning Comment:

- No dwelling house construction is proposed, however the applicant has demonstrated that proposed Lot 1 can achieve rear setback of between 3.11m to 11.2m which allows for deep soil planting. The non-compliant setback of 3.11m is influenced by the existing land level / terrace line in the rear yard. A future dwelling design would likely allocate the SE corner of the proposed building envelope for a garage and therefore maintains a single shared driveway for the entire both properties to maintain soil landscape areas.
- For proposed Lot 2 the applicant has shown a 4.99m to 7.5m setback to the southern (rear) boundary. This is a battle axe shaped Lot and therefore a reduced setback to the rear is consistent with the pattern of development on surrounding battle axe lots whereby another side setback is commonly wider due to access arrangements for vehicles and parking. This enables a wider landscape space around one quadrant of the site and commonly narrower landscaping

toward the opposite quadrant of a battle axe lot.

- The applicant has not provided detailed design or construction plans for a dwelling house on Lot 1 or Lot 2 however with the landscape buffers shown privacy impacts may be addressed by screen planting and window design / placement. The rear (southern) setback is benefited by the land dropping away steeply (4m to 6m) beyond the rear boundary.
- The proposal is consistent with the rear setback control for the DCP and pattern of development in Ashworth Avenue. The rear (south) setback for proposed Lot 1 and Lot 2 is acceptable for the site to address privacy, open space and enable a landscape buffer.

C1 Subdivision

Component	Requirement	Proposed	Compliant
Lot requirements	R2 Low Density Residential zone requirements:	Lot 1 (front) <u>Width</u> : 13.5m width + 3.52 for driveway (17.07m total) (measured through centre of Lot 15.1m)	Yes
	Proposed new allotments:		Yes
	a) Minimum width: 13 metres	<u>Depth</u> : 30.4m to 32.0m (measured through centre of Lot 32.6m)	Yes
	b) Minimum depth: 27 metres; and	<u>Building area</u> : 179sqm	Yes
	c) Minimum building area: 150m ²	Lot 2 (rear) <u>Width</u> : 20.6m (measured through centre of Lot 20.7m) <u>Depth</u> : 22.97 to 27.72m (measured through centre of Lot 23.5m) <u>Building area</u> : 159sqm	No Yes
Access	Motor vehicle access to each residential allotment is required from a constructed and dedicated public road.	RoW access way is 30.0m to 30.4m (through proposed Lot 1 only)	No - Refer to discussion
	Where access is proposed to a section of unconstructed public road, then the subdivision will need to provide legal, constructed access to the Council's satisfaction.	Frontage to Ashworth Avenue for both lots within single shared RoW.	Yes
	Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided.	Single shared driveway (bins brought to street frontage)	Yes
	Driveways, accessways, etc, to	Driveway gradient will be compliant as site does not slope too steeply along the RoW area.	N/A

allotments should have a gradient not exceeding 1:4 and allow for transitions at a minimum length of 1.5m and at a grade no steeper than 1:10. Driveways in excess of 200 metres will not be allowed for residential development. Driveways that are 30m or more in length require a passing bay to be provided every 30m. To provide a passing bay, driveways shall be widened to 5.0m for a distance of at least 10m. Passing bays should have regard to sight conditions and minimise vehicular conflict. Vehicular ingress/egress points to internal lots may be used as passing/turning bays, subject to extension of a right-of-carriageway over the passing/turning bay. Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities. Width of accessways are to be as follows:	N/A	No passing bay proposed.								
	No passing bay provided (0.4m variation)	N/A								
	No passing bay.	Right of way to single lot only and does not require shared passing area.								
	Rear of lot is shaped / angled to limit the length of the RoW.									
	Garage access (x 2) is directly from shared RoW.									
	3.5m accessway to be clear constructed.									
	0.5m additional width not provided. (easement for sewer and drainage on opposite side of Lot 2 for rear connection to easement) Electricity, cables, water and gas may be co-located under future driveway.									
<table><tr><td>Number of lots to be serviced</td><td>Width of clear constructed accessway (m)</td></tr><tr><td>1 - 5</td><td>3.5</td></tr><tr><td>6 - 10</td><td>5.0</td></tr><tr><td>in excess of 10</td><td>Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering</td></tr></table>	Number of lots to be serviced	Width of clear constructed accessway (m)	1 - 5	3.5	6 - 10	5.0	in excess of 10	Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering		
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in excess of 10	Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering									

	<table><tr><td></td><td>works (AUSPEC 1)</td></tr></table> <p>Provision of services in rights of carriageway are as follows:</p> <table><tr><td>Number of lots to be serviced</td><td>Additional width to be provided in Right of Carriageway (m)</td></tr><tr><td>Up to 3 lots</td><td>0.5</td></tr><tr><td>4 or more lots</td><td>1.0</td></tr></table>		works (AUSPEC 1)	Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)	Up to 3 lots	0.5	4 or more lots	1.0		
	works (AUSPEC 1)										
Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)										
Up to 3 lots	0.5										
4 or more lots	1.0										
Design and construction	<p>All roads, rights of carriageway, drainage design and construction is to be in accordance with Council's policy requirements including; AUSPEC 1 - Council's Specification for Engineering Works, Development Engineering Minor Works Specification, On Site Stormwater Detention (OSD) Technical Specification and Council's Water Sensitive Urban Design Policy. Additionally, internal roads must be designed in accordance with the relevant Australian Standards.</p> <p>Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.</p>	<p>OSD details not satisfied for Development engineering and Water Quality requirements. (See "Internal Referrals")</p> <p>Solar access not provided.</p>	No - Refer to discussion below this table								
Drainage	<p>Provision should be made for each allotment to be drained by gravity to a Council-approved drainage system. The topography of the land should not be altered to adversely affect the natural drainage patterns. Stormwater should drain directly to a Council-approved drainage system and not via adjoining properties unless via a formalised inter allotment drainage system. The proposed allotments are to be drained to the direction of the natural fall of the land. Inter allotment drainage easements</p>	<p>Drainage information not satisfied for engineering.</p>	No - Refer to discussion below this table								

	will be required through adjoining properties to adequately drain land to Council's downstream system.		
Restrictions	Any easement, right-of-carriageway, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive covenant or like instrument with the Council nominated as a party.	Positive covenant can be applied.	Yes
Environmentally constrained land	In areas subject to constraints such as flooding, tidal inundation, threatened species, landslip risk, bushfire or any other matter, adequate safe area for building, where the risk from hazard is minimised, is to be provided within an allotment. Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops.	No significant natural constraints such as slope, bushfire, riparian land. Parent Lot area is insufficient to accommodate subdivision and access handle without significant variation to the minimum lot area. (See LEP Clause 4.6 - not supported)	Yes
Bushfire	Subdivision should be designed to minimise the risk from potential bushfire. Asset protection zones should be contained within the property boundaries of the new subdivision.	Not applicable	N/A

Description of non-compliance

The non-compliance with Clause C1 are minor and relate to width for services, dimensions and in sufficient information.

(Lot depth, access handle length, drainage, services width)

Merit consideration

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

- *To regulate the density of development.*

Comment:

The proposal has some difficulty in achieving full compliance due to the parent area and shape of the lot. The non-compliances in the lot depth however are limited to the outer edges of the site due to the shaped boundary lines. Across the centre of the building envelope the width and depth are compliant. The proposal includes a minor variation to the access handle being 30.4m long on one side. However the access handle is 30m and therefore does not warrant a passing bay. The driveway alignment is not steep, curved and reversing or sight distances are not

difficult. No passing bay is warranted. The proposal does not have a 4.0m access way that includes 0.5m for services (along the eastern boundary). Services can be co-located and at the rear an easement is shown to connect Lot 1 to drain / services along the western boundary.

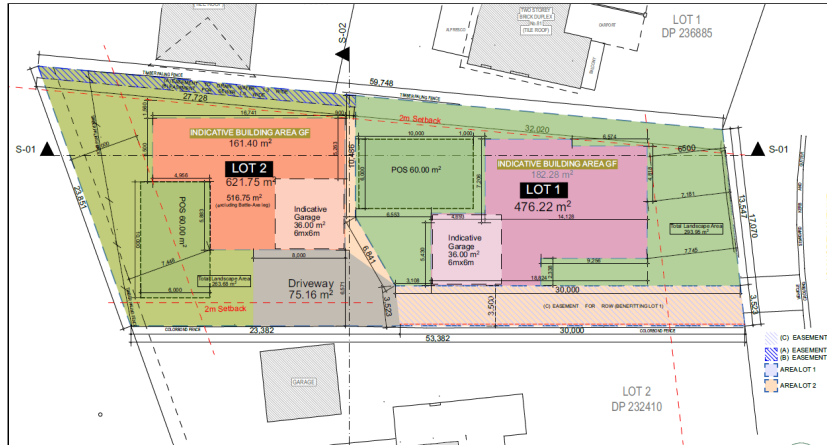


Image: Subdivision layout, driveway, easements, POS, landscaping and dwelling footprints / garage space indicated.

- *To limit the impact of new development and to protect the natural landscape and topography.*

Comment:

The proposal is able to achieve more than 40% landscaping for both lots and there are no significant trees within the proposed building platforms. There are no significant rock outcrops or riparian/coastal/landslip zones within the site.

- *To ensure that any new lot created has sufficient area for landscaping, private open space, drainage, utility services and vehicular access to and from the site.*

Comment:

Sufficient area has been reserved for more than 40% landscaping for each lot. Private open space of 60sqm or more has been allocated and clear driveway area for access of 3.5m

- *To maximise and protect solar access for each dwelling.*

Comment:

Details solar analysis has not been provided. The proposal would eventually lead to increase overshadowing of adjacent POS since the land is suitable for 2 storey dwelling construction. Insufficient information has been provided to address this environmental impact.

- *To maximise the use of existing infrastructure.*

Comment:

The two lot subdivision will enable existing infrastructure to be used including sewer connections, stormwater, road access and the like.

- *To protect the amenity of adjoining properties.*

Comment:

Landscape buffers have been provided for the curtilage for each dwelling envelope. The driveway is located adjacent the neighbouring driveway along the eastern boundary to protect the amenity of neighbours. Detailed dwelling designs would be required to address landscaped screen planting, replacement fencing, window and balcony spaces. The proposal is only for subdivision and no dwelling construction is proposed.

- *To minimise the risk from potential hazards including bushfires, land slip and flooding.*

Comment:

There are not hazards affecting the site as per this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance due to insufficient area to enable compliance and insufficient information as detailed above.

C2 Traffic, Access and Safety

The objectives of Clause *C2 Traffic Access and Safety*, apply to subdivision and are:

- *To minimise:*
 - a) *traffic hazards.*
 - b) *vehicles queuing on public roads.*
 - c) *the number of vehicle crossings in a street.*
 - d) *traffic, pedestrian and cyclist conflict.*
 - e) *interference with public transport facilities.*
 - f) *the loss of "on street" kerbside parking.*

Planning Comment:

- The variation (not including extra 0.5m for services) to the width of the right of carriageway (RoW) shared driveway access is minor and does not prevent or increase risk or accessibility to the site along the proposed 3.5m carriageway. The proposal is consistent with the objectives of this clause as the driveway is straight and has a low gradient for vehicles / pedestrian use. The need for a passing bay is unwarranted for the 0.4m driveway length variation and services space of 0.5m can be managed by co-locating (cables, waterlines etc) centrally under the driveway. The driveway position utilised the existing driveway access point to Ashworth Avenue.
- At the rear an easement is proposed (on the western side of proposed Lot 2 burdened, and in favour of Lot 1) to connect to the drainage easement along the southern boundary.

C3 Parking Facilities

Merit consideration

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

- To provide adequate off street carparking.*

Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Dwelling house	2 car spaces for detached dwellings	2	2	0
Total				

Allocated garage space is shown in the concept diagrams. A clear 3.5m driveway width is shown on the subdivision plans.

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

Comment:

For the purposes of subdivision the residential impact on the surrounding street traffic is minor being 2 x 2 on-site spaces. The garages are accessed along the RoW and therefore face the side boundary fence. This will not unreasonably impact the street frontage.

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

Comment:

The concept garage / carparking locations are toward the central area of the site and do not dominate the street.

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

C4 Stormwater

Merit consideration

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

- To ensure the appropriate management of stormwater.*

Comment:

Insufficeint information has been provided to address stormwater requirements as detailed

within the Engineering referral comments in this report. (see heading "Internal Referrals")

- *To minimise the quantity of stormwater run-off.*

Comment:

Insufficeint information has been provided to address stormwater requirements as detailed within the Engineering referral comments in this report. (see heading "Internal Referrals")

- *To incorporate Water Sensitive Urban Design techniques and On-Site Stormwater Detention (OSD) Technical Specification into all new developments.*

Comment:

The proposal is capable of demonstrating OSD with future dwelling house applications however the information requested for subdivision assessment will require design details that have not been submitted as per Council's Water (quality) Management referral (see heading "internal referrals") including Council's development engineers.

- *To ensure the peak discharge rate of stormwater flow from new development is no greater than the Permitted Site Discharge (PSD).*

Comment:

Future PSD will be subject to future dwelling house area / design. Adequate pipe size is able to be accommodated within the proposed easement over proposed Lot 2.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance due to insufficient information to address Development Engineering requirements.

D6 Access to Sunlight

The objectives of D6 are considered as follows:

- *To ensure that reasonable access to sunlight is maintained.*
- *To encourage innovative design solutions to improve the urban environment.*
- *To promote passive solar design and the use of solar energy.*

Planning comment

- It is likely that future dwellings will contain at least 3 bedrooms each (due to the 2 storey large building footprint indicate) and therefore the minimum area of private open space required is 60sqm with a minimum dimension of 5m has been applied.
- The future development plans for dwellings on the resultant lots will need to demonstrate that 50% of private open space will receive a minimum of 3 hours of sunlight between 9am and

3pm on June 21. However this has not been indicated now and therefore it is uncertain if the lot variation is warranted or would adversely influence the ability to comply with the DCP in this regard.

- The site is north facing for the frontage to Ashworth Avenue however the rear lot and size of adjacent dwelling affects the land and within indicative solar access diagrams 3 hours of solar access may not be achieved given the reduced site areas.

D9 Building Bulk

The Objectives of Clause D9 are considered as follows:

- *To encourage good design and innovative architecture to improve the urban environment.*
- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Planning comment

- The future intended purpose of the subdivision is for detached style housing in a low density residential environment therefore the requirements of Clause D9 assists to also address and demonstrate roof shape, building articulation, wall height and excavation in context with building bulk that may result from redevelopment of the land on the undersized lots for new dwelling houses.

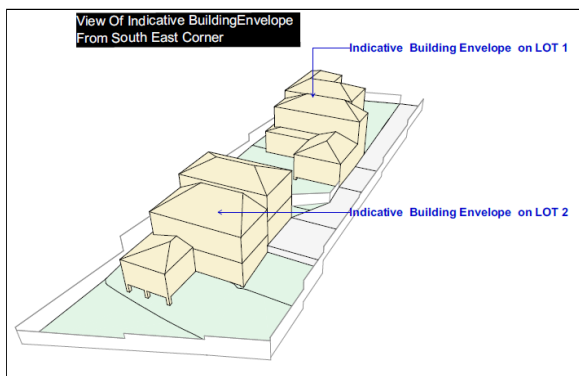


Image: Indicative building shape within 3D buiding envelope.

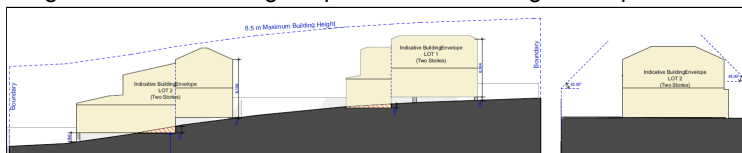


Image: Indicative building profile below 8.5m and within side boundary envelope.

- The above concept diagrams illustrate that 2 x two storey dwellings can be accommodated on the land with compliant height, compliant side setbacks and compliant wall articulation. This however would be subject to detailed custom design to achieve compliant outcomes. The use of a restrictive covenant (3D envelope as shown may assist to achieve the desired urban form).

- The visual impact of a dwelling on Lot 2 will be screened from the street by the front house however the in-fill of the rear of the site increases the development density when viewed from No.77, No.83 and No.81 Ashworth Avenue. Properties to the south of the site are considerably lower by 4 to 6m due to a minor escarpment feature.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- 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
- Inconsistent with the objectives of the relevant EPs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

That Northern Beaches Council as the consent authority permits a contravention of clause 4.1 Minimum Subdivision Lot Size development standard pursuant to clause 4.6 of the WLEP 2011 as the

applicant's written request has not adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will not be in the public interest and is inconsistent 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 of a dwelling house and subdivision of land for 2 residential lots and has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to variation to the minimum lot size of more than 10% (below 600sqm). The variation to proposed Lot 1 is 20.7% (to 475.58sqm) and for proposed Lot 2 is 14% (to 516.0sqm)

Concerns raised in the objections predominantly relate to stormwater and possible asbestos in the existing dwelling. Asbestos matters are appropriate to address by conditions however the stormwater matters have not been resolved due to insufficient information received. Council has permitted adequate time for additional information during the assessment period.

Critical assessment issues included the extent of variation sought pursuant to Clause 4.6 of the Warrigah Local Environmental Plan 2011 in context with the prevailing subdivision pattern that is generally Lots more than 600sqm. The proposal is inconsistent with the established character of the area and holding pattern and will create an unfavourable precedent.

Insufficient planning grounds have been provided to support the variation and it has not been established that the proposed lots can be developed in compliance with the Development Control Plan for the purpose of the intended future land use of the subdivision.

This report concludes with a recommendation that the NBLPP refuse the development application. It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

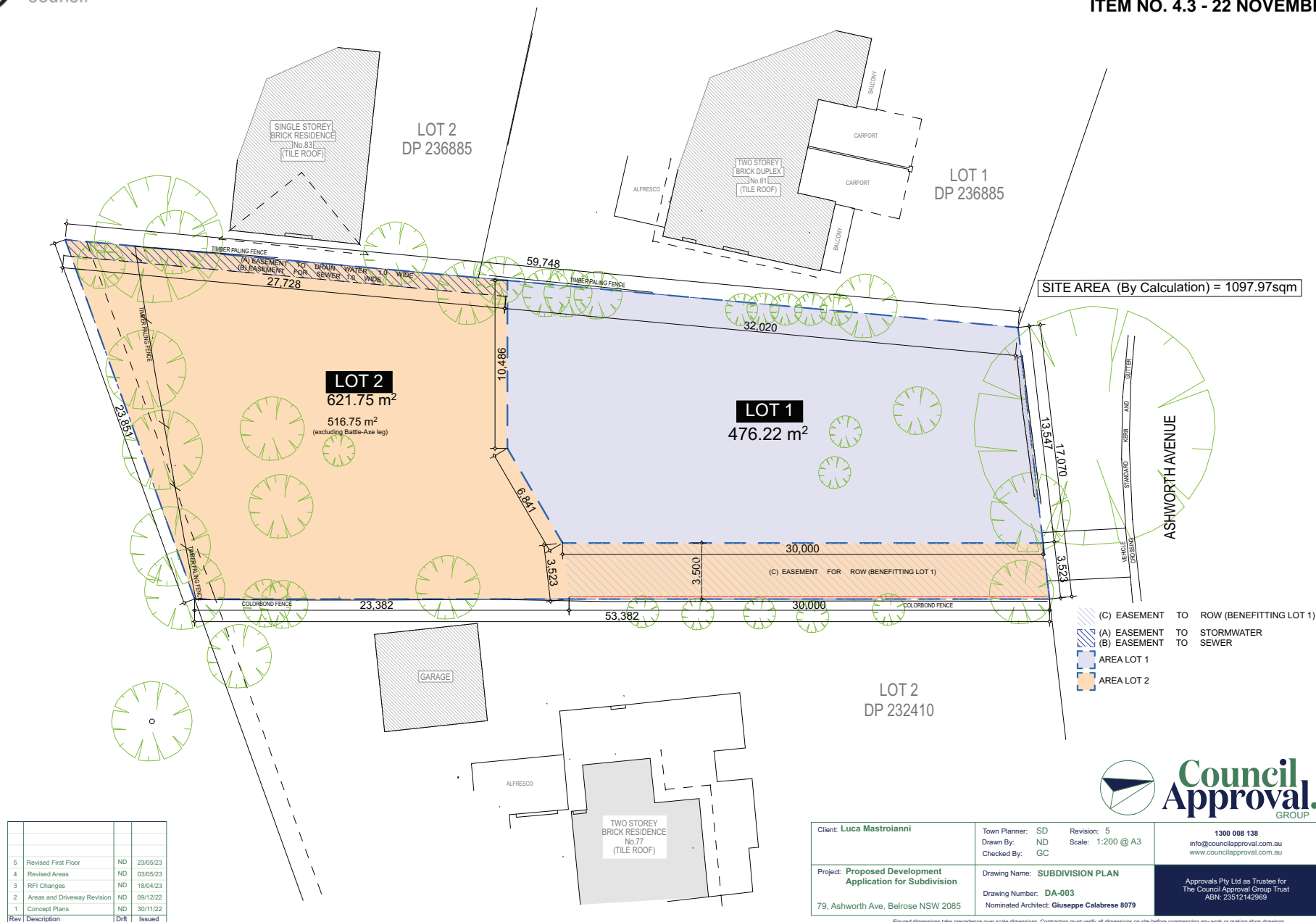
THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2023/0067 for the Demolition works and subdivision of one (1) lot into two (2) lots on land at Lot 1 DP 232410,79 Ashworth Avenue, 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 Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the objectives of the R2 Low Density Residential Zone of the Warringah Local Environmental Plan 2011.
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 Clause 4.1 Minimum Subdivision Lot Size of the Warringah Local Environmental Plan 2011.
4. 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 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011.

Particulars:

- The applicant's written request has established sufficient environmental planning grounds to support the variation
 - The variation will create an undesirable precedent.
 - The surrounding subdivision pattern is established as being predominantly above the minimum lot size proposed and therefore the proposal is inconsistent with the reduced lot size sought.
 - The proposed subdivision has not demonstrated that the land can be developed in full compliance with the applicable development controls for the future residential purpose of the subdivision.
-
5. 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 A.5 Objectives of the Warringah Development Control Plan.
 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 C4 Stormwater of the Warringah Development Control Plan due to insufficient information to address development engineering and water quality requirements.
 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 D6 Access to Sunlight of the Warringah Development Control Plan due to insufficient information to demonstrate future dwellings (including private open space) can achieve compliant solar access.

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





Clause 4.6 Variation Request Report

79 Ashworth Avenue
Belrose NSW 2085

4 May 2023

Created By:	SD
Checked By:	KH

Approvals Pty Ltd as Trustee for The Council Approval Group Trust

Contents

1	Introduction.....	1
1.1	Report purpose	1
1.2	Variation Request Summary	1
2	Planning Context.....	2
2.1	Clause 4.6.....	2
2.2	Case Law.....	3
2.3	Balancing development standards and environmental planning outcomes.....	4
3	Development Overview	5
3.1	The Subject Site.....	5
3.2	Proposed Development.....	8
3.3	Building Envelopes.....	8
3.4	Context and setting.....	10
3.5	Supporting Assessment.....	10
4	Clause 4.6 Variation Assessment	12
4.1	Environmental Planning Instrument details.....	12
4.2	Clause 4.6 Assessment – Minimum Subdivision Lot Size.....	14
5	Conclusion.....	19

1 Introduction

1.1 Report purpose

Development consent is being sought for the subdivision of one into two lots at 79 Ashworth Ave, Belrose NSW 2085. The development exceeds the Minimum Subdivision Lot Size under Clause 4.1 and, as such, a variation is sought under Clause 4.6.

This development standard variation request has been prepared under Clause 4.6 of the Warringah Local Environmental Plan 2011 to justify the departure from development standard for Minimum Subdivision Lot Size in Clause 4.1 of the LEP.

Clause 4.6 aims to provide an appropriate degree of flexibility in applying certain development standards. It is a facilitative clause which enables the consent authority to grant consent to a development although it contravenes a development standard. This is subject to the consent authority being satisfied that there are proper planning grounds to justify the contravention.

This report contends that in the circumstances of this unique development being on this particular site that adherence to the 600sqm lot requirement is unnecessary in this case due to the achievement of the objectives of the clause and positive environmental planning outcomes achieved by the development, notwithstanding the non-compliance allows for the orderly and economic use of the land in an appropriate manner.

1.2 Variation Request Summary

This Clause 4.6 Variation Request demonstrates that:

- Compliance with the relevant development standard is unreasonable or unnecessary in the circumstances as the development achieves the objectives of the development standard in Clause 4.1 of the LEP notwithstanding the non-compliance.
- There are sufficient environmental planning grounds to justify contravening the development standard.
- This written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).
- The proposed development would be in the public interest because it is consistent with the objectives of the Minimum Subdivision Lot Size and the objectives for development within the zone.
- The proposed subdivision is consistent with the existing subdivision pattern in the locality, which comprises lots of varying sizes and configurations.
- Despite the non-compliance with the minimum lot size control, the proposed subdivision will provide lots that are capable of accommodating future dwellings that will provide suitable amenity for occupants and neighbours.
- The proposed subdivision includes an Indicative Building Area (DA-004) and Indicative Building Envelope (DA-005). The purpose of these drawings is to provide a three-dimensional building envelope that the future dwellings must adhere to. This can be imposed via a section 88B instrument.
- The proposed building envelopes represent an enhanced environmental outcome, as they will ensure that the landscaped area and setbacks significantly exceed the requirements of the Warringah Development Control Plan 2011 (DCP 2011) or State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP).

- The proposed subdivision provides additional housing diversity and affordability for the community whilst maintaining a low-density environment; and
- The positive outcomes of the departure from the standard outweigh the negatives which would result from strict adherence to the standard as set out under Clause 4.1 Minimum Subdivision Lot Size.

2 Planning Context

2.1 Clause 4.6

Clause 4.6 of the Warringah Local Environmental Plan 2011 permits departures from development standards in certain circumstances. It is necessary to consider if compliance with the development standard is consistent with the aims of the LEP and whether compliance with the development standard hinders the attainment of the Objects of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* which are:

- 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 aims and objectives of the Warringah Local Environmental Plan 2011 Clause 4.6 are as follows:

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

Under Clause 4.6(3) and (4) of the Warringah Local Environmental Plan 2011, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

It is noted that the Local Environmental Plan and Clause 4.6(8) was formulated to deliberately exclude a number of development standards from the flexibility facilitated by Clause 4.6. In other words, the consent authority and department considered that there were, in formulating the legislation, certain standards that

should not be varied. This is of relevance therefore, that the consent authority did not exclude the Minimum Subdivision Lot Size under Clause 4.1 and accepted that there could be merit assessment for departure from the minimum standard for lot size.

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

2.2 Case Law

Several key NSW Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and directions from these cases are summarised below and the relevant cases referenced.

Wehbe v Pittwater [2007] NSW LEC 827

This case is the pinnacle decision on how to establish that compliance with a development standard is unreasonable or unnecessary. The decision of Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 (**Wehbe**), expanded on the findings in *Winten v North Sydney Council*, and identified the now well known, five (5) ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that a request must satisfy all five ways, or that they were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five (5) ways outlined in **Wehbe** include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Way**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Way**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Way**).
- 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 (**Fourth Way**).
- 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 (**Fifth Way**).

Other key cases and their findings

Since the **Wehbe** decision and five (5) ways were established, case law over the last few years has refined and given greater clarification around the writing and assessing of a Clause 4.6 variation request. These cases include:

- *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC 90 (**Four2five**).
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSW LEC 7 (**Micaul**).
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (**Initial Action**).

- *Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSW LEC 191 (Rebel Neutral Bay)*; and
- *Thompson Health Care Pty Limited v Ku-ring-gai Council [2020] NSW LEC 1363 (Thompson Health Care)*.

In summary these cases have helped to establish that:

- It is necessary to demonstrate compliance with the Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP.
- It is necessary to provide clear argument as to why adherence to the standard is unreasonable and unnecessary specific to the proposal and the aspect of the proposal which is non-compliant.
- It is necessary that the argument is founded on environmental planning grounds and does not necessarily need to facilitate a neutral or better outcome.
- It is necessary to provide adequate justification and assessment of the ability of the development to achieve the objectives of the standard and zone, notwithstanding the non-compliance.
- It is satisfactory that the consent authority need only be indirectly satisfied that the written request adequately addresses the non-compliance.
- In contrast to the indirect satisfaction with the adequacy of the written request, the consent authority must then be directly satisfied that the proposed development, contravening the development standard, will be in the public interest.
- Satisfying all these ensure compliance with the requirement that all three elements of Clause 4.6 must be met.

Each of these matters have informed the preparation of this request and the opinion that the variation of the Minimum Subdivision Lot Size in Clause 4.1 of the Warringah Local Environmental Plan 2011 is justified in the case of the proposed development.

2.3 Balancing development standards and environmental planning outcomes

Clause 4.6 provides an opportunity for the efficient administration of planning law through the ability to balance technical development standard compliance with good environmental planning outcomes that can be achieved through varying a development standard. As noted in the ongoing use of Clause 4.6, and the case law mentioned above, it is possible to meet planning objectives and promote positive, rather than negative, environmental planning outcomes when departing from a development standard when balancing planning law with the merits of a site, the needs of owners, and the broader context and setting.

The departure supported by this Clause 4.6 variation request highlights how, in this particular instance, the positive outcomes specific to this site and locality outweigh any negatives perceived to result from departures to development standards.

Importantly, support for the proposed departure will not set a precedent as the uniqueness of this site and the proposal demonstrate that while strict adherence to the set development standard is desirable generally, there is the opportunity to achieve a better environmental planning outcome on this site, through the development as proposed, notwithstanding the non-compliance of the proposed 476.22sqm and 516.75sqm lot size compared to the Development Standard of 600sqm.

The building envelopes proposed represent a better environmental outcome by ensuring that the future dwellings are significantly setback and provide a generous provision of landscaped area (well in excess of

the DCP or Codes SEPP requirement). The imposition of building envelopes by way of a Section 88B instrument would, in the circumstances of the case, set a desirable planning precedent.

3 Development Overview

3.1 The Subject Site

Details of the site are provided below. The location of the subject property is shown on the location and aerial maps at **Figures 1** and **2**. A Google Street image of the property is included at **Figure 3**. The property is located in the Northern Beaches Council area.

The site slopes moderately from the street to the rear of the site (refer **Figure 4**). It is improved with a single storey dwelling house built in the 1970s. The property is landscaped and fenced. As shown on the Detailed Survey, there is a retaining wall and fence at the rear of the property.

There is an Easement to drain water 1.22m wide at the rear of the property, as shown in **Figure 5**.

Surrounding land uses primarily consist of low scale residential development with varying lot sizes. The site is within walking distance to Glenrose Village Shopping Centre and Kambora Public School.

Address	Title Details	Site Area	Site Frontage
79 Ashworth Avenue, Belrose 2085	Lot 1, DP232410	1,101.55 sqm (approx.)	17.07 metres (from survey)



Figure 1: Site location (Source: landchecker.com.au)



Figure 2: Site aerial (Source: landchecker.com.au)

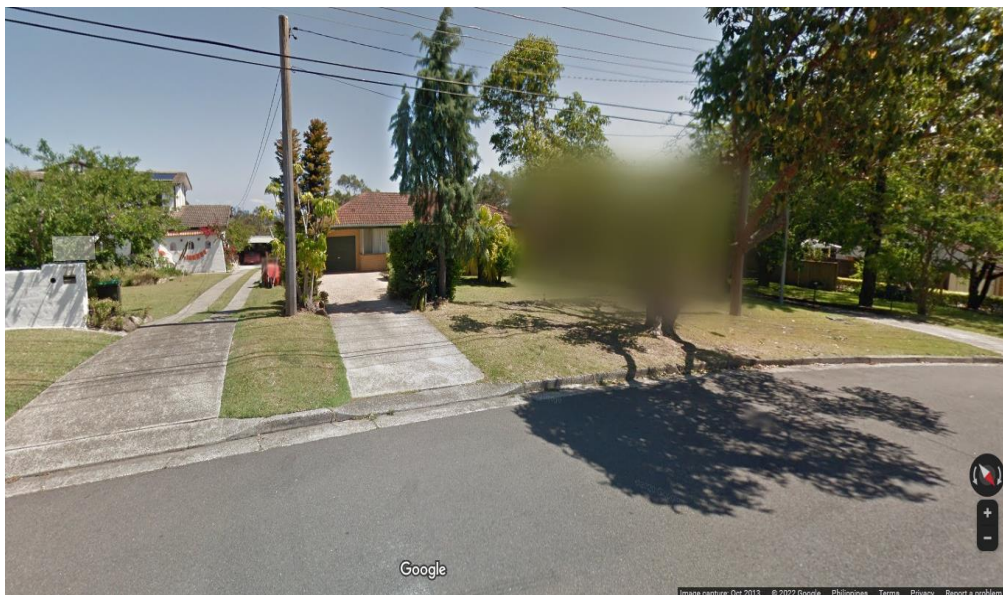


Figure 3: Google Street View



Figure 4: Photo of the rear setback of the property

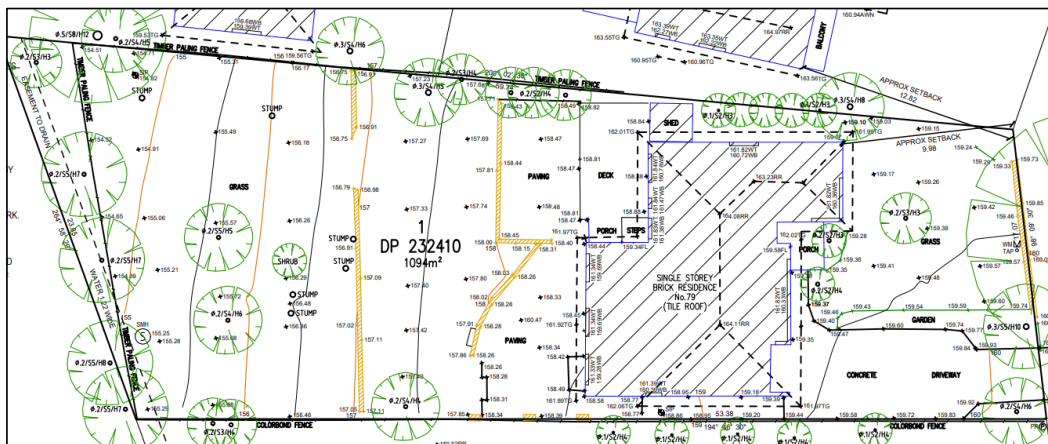


Figure 5: Survey extract showing drainage easement (Source: Nastasi & Associates)

3.2 Proposed Development

The proposed development comprises Torrens title subdivision and demolition of the existing dwelling house.

This will result in two lots, as shown in **Figure 6**. The details of the proposed subdivision can be summarised as follows:

- The front Lot (Lot 1) is proposed to comprise 476.22sqm.
- The rear Lot (Lot 2) is proposed to comprise 621.75sqm (516.75sqm excluding the access handle).
- The access handle (shown as driveway) will comprise a total of 105sqm and form part of Lot 2.

An easement benefitting Lot 1 over the access handle (shown as driveway) is also proposed. This is to ensure that vehicular access to the two lots will be from one consolidated crossover/driveway.

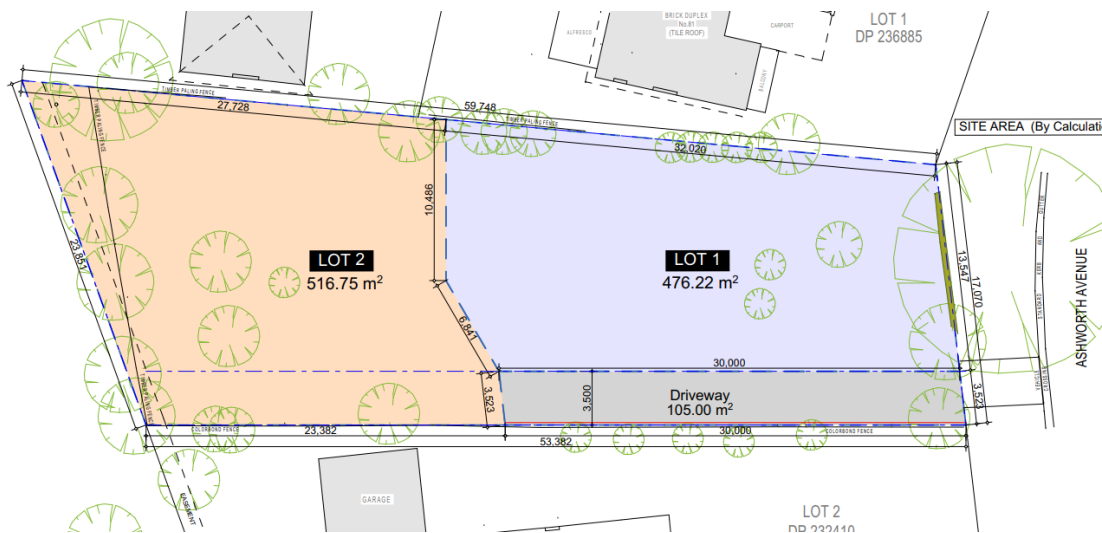


Figure 6: Extract from proposed subdivision plan

3.3 Building Envelopes

The proposed subdivision includes an Indicative Building Area (DA-004) and Indicative Building Envelope (DA-005). The purpose of these drawings is to provide a three-dimensional building envelope that the future dwellings must adhere to. This can be imposed via a section 88B instrument.

As shown in **Figure 7**:

- The future dwelling on Lot 1 is to be contained within a building area that cannot exceed 182.28 sqm (inclusive of garage).
- The future dwelling on Lot 2 is to be contained within a building area that cannot exceed 161.40 sqm (inclusive of garage).

- The future dwelling on Lot 1 must be setback a minimum of 6.5m from Ashworth Avenue. Due to the consolidated vehicle access arrangement, the front setback will not comprise a driveway. This maximises the opportunities for landscaping.
- The future dwellings on Lots 1 and 2 must be setback a minimum of 2m from the side (west) boundary).
- The future dwelling on Lot 2 must be setback a minimum of 6m from the rear (south) boundary.
- One consolidated 3.5m wide driveway is proposed on Lot 2. This will be shared by Lot 1.
- The building envelope proposed allows for a minimum consolidated private open space (POS) area of 60 sqm to be provided. The indicative location of the POS is relatively flat.



Figure 7: Extract from proposed Indicative Building Area (DA-004) plan

As shown in **Figure 8** and **Figure 9**, a three-dimensional building envelope is also proposed. This provides for:

- A maximum wall height of approximately 7.1m, as measured from ground level (existing) to underside of the ceiling.
- A maximum height to the roof ridgeline of 8.5m, as measured from ground level (existing).
- The progressive stepping of the side setbacks as wall height increases. This is achieved through a 45-degree angled building plane, measured approximately one storey or 3.1m above ground level (existing).

The proposed building envelopes provide certainty that the future dwellings on each lot will achieve an enhanced environment outcome, without limiting flexibility for innovative architectural outcomes.

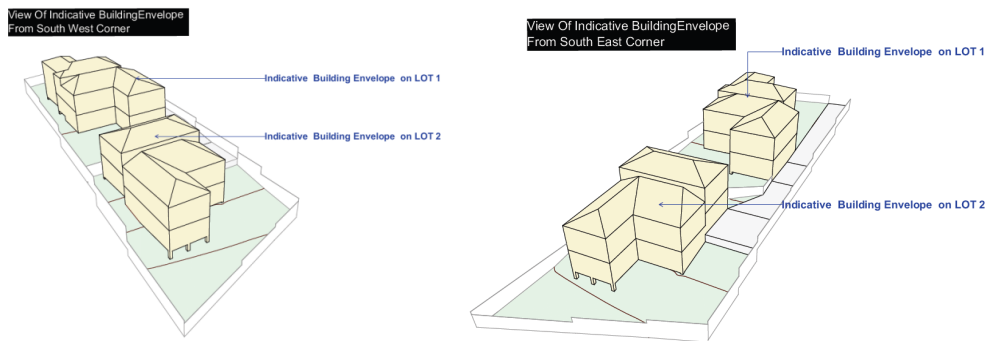


Figure 8: Extract of Indicative Building Envelope (DA-005) plan

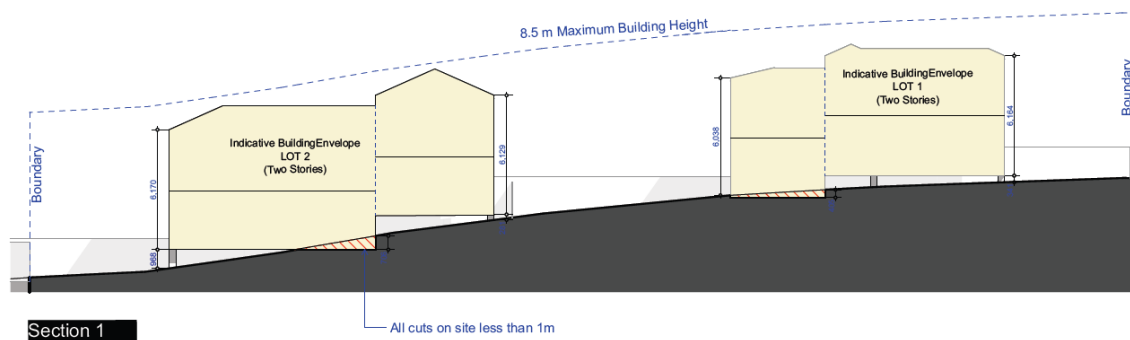


Figure 9: Extract of Indicative Building Envelope (DA-005) plan (2)

3.4 Context and setting

Surrounding land uses primarily consist of low scale residential development with varying lot sizes and configurations. The site is within walking distance of Glenrose Village Shopping Centre and Kambora Public School.

3.5 Supporting Assessment

The site is considered appropriate for subdivision resulting in lots that do not meet the Minimum Subdivision Lot Size for the reasons set out in this assessment.

It is noted that future dwellings will achieve a better environmental outcome through the imposition of strict building envelope requirements and the requirement for one consolidated crossover/driveway that provides shared access. The provision of landscaped area is significantly increased through building envelopes that are smaller than the controls requirement. The requirement to consolidate the driveway allows for a significant provision of landscaping within the front setback and retains a single crossover to Ashworth Avenue.

It is also noted that the resulting lots are compatible with the pattern of development in the immediate locality.

Figure 10 below shows the configuration of allotments to the north-west, including at least five battle-axe lots.



Figure 10: Lot pattern in surrounding area

The subdivision of the subject site into two allotments would be in keeping with the lot pattern in the surrounding area. The configuration of the rear lot, i.e. a battle-axe lot, is not uncommon in this locality.



Figure 11: Pattern of residential development in surrounding area

Figure 11 above shows the pattern of residential development in the immediate area. The building footprints of existing dwellings in the street are shaded yellow (red outline). The proposed future building areas for the subject site are shaded red.

This figure clearly demonstrates that the proposed future development of the property will be in keeping with the pattern of existing residential development, creating building footprints that are not incongruous with the footprints of neighbouring development.

4 Clause 4.6 Variation Assessment

4.1 Environmental Planning Instrument details

4.1.1 What is the name of the environmental planning instrument that applies to the land?

Warringah Local Environmental Plan 2011 (Warringah LEP 2011).

4.1.2 What is the zoning of the land?

The land is zoned R2 – Low Density Residential.

4.1.3 What are the objectives of the zone?

- *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.*

4.1.4 What is the development standard being varied?

Minimum Subdivision Lot Size.

4.1.5 Under what clause is the development standard listed in the environmental planning instrument?

Clause 4.1 – Minimum Subdivision Lot Size. The Clause states as follows:

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

- (a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,*
- (b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,*
- (c) to protect the integrity of land holding patterns in rural localities against fragmentation,*
- (d) to achieve low intensity of land use in localities of environmental significance,*
- (e) to provide for appropriate bush fire protection measures on land that has an interface to bushland,*
- (f) to protect and enhance existing remnant bushland,*
- (g) to retain and protect existing significant natural landscape features,*

- (h) to manage biodiversity,*
- (i) to provide for appropriate stormwater management and sewer infrastructure.*
- (2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*
- (3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*
- (3A) For the purposes of subclause (3), in calculating the size of a lot the area of any access corridor (including any right of carriageway, access way or other area that provides for vehicle access) is to be excluded, whether the access corridor is to be created or is in existence at the time of the application for development consent for the subdivision.*
- (4) This clause does not apply in relation to the subdivision of any land—*
 - (a) by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or*
 - (b) by any kind of subdivision under the Community Land Development Act 2021.*

4.1.6 What are the objectives of the development standard?

- (a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,*
- (b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,*
- (c) to protect the integrity of land holding patterns in rural localities against fragmentation,*
- (d) to achieve low intensity of land use in localities of environmental significance,*
- (e) to provide for appropriate bush fire protection measures on land that has an interface to bushland,*
- (f) to protect and enhance existing remnant bushland,*
- (g) to retain and protect existing significant natural landscape features,*
- (h) to manage biodiversity,*
- (i) to provide for appropriate stormwater management and sewer infrastructure.*

4.1.7 What is the numeric value of the development standard in the environmental planning instrument?

600sqm.

4.1.8 What is proposed numeric value of the development standard in your development application?

Proposed Lot 1 measures 476.22sqm and proposed Lot 2 measures 621.75sqm (516.75sqm excluding the access handle). The proposed Lot 2 complies with the standard inclusive of the access handle, however both Lot 1 and Lot 2 (exclusive of the access corridor) present a variation to the standard.

4.1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

For Lot 1 the variation is 20.63% and for Lot 2 the variation is 13.88%. The overall variation across both lots is 17.25%.

4.1.10 Does Clause 4.6 include a provision that would prohibit the application for variation of the development standard?

No.

4.2 Clause 4.6 Assessment – Minimum Subdivision Lot Size

The following section addresses the provisions of Clause 4.6 of the Warringah Local Environmental Plan 2011 together with principles established in the NSW Land and Environment Court Case Law outlined above.

4.2.1 Clause 4.6(3)(a)

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, Way Number 1, established in **Wehbe** is considered and addressed as follows.

First Way

The objectives of the standard are achieved notwithstanding non-compliance with the standard.

The objective of the standard is:

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

- (a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,*
- (b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,*
- (c) to protect the integrity of land holding patterns in rural localities against fragmentation,*
- (d) to achieve low intensity of land use in localities of environmental significance,*
- (e) to provide for appropriate bush fire protection measures on land that has an interface to bushland,*
- (f) to protect and enhance existing remnant bushland,*
- (g) to retain and protect existing significant natural landscape features,*
- (h) to manage biodiversity,*
- (i) to provide for appropriate stormwater management and sewer infrastructure.*

It is considered that the proposal is consistent with the objective of the standard for the following reasons:

- The proposal protects the residential character:
 - By requiring that the future dwellings are strictly contained within a designated building envelope and that one crossover/driveway is provided;

- The position of the building envelopes significantly limits the visibility of the dwelling on Lot 2 as it is located behind the dwelling on Lot 1. This assists in maintaining a consistent streetscape character;
- The street setback to Lot 1 provides for significant landscaping opportunities as no driveway or garage/carport can be located in this area;
- The side setbacks will, at a minimum exceed 2m. This affords opportunities for dense landscaping and small/medium sized trees;
- The proposed lots are consistent with the pattern and configuration of existing lots and development in the locality as shown in **Figures 10** and **Figure 11**;
- As shown in **Table 1**, the development of the resultant lots can accommodate a permissible use that complies with relevant planning provisions and controls, thus supporting the objective to protect residential character. The building envelopes provide an enhanced environmental outcome that would otherwise be achieved under the DCP 2011 or the Codes SEPP. It is clear from this assessment that the future dwellings will comply and improve upon the key requirements of the DCP 2011;
- The future development of Lot 2 will not appear dominant in the public domain as the site slopes moderately to the rear. Furthermore, the building envelope is positioned such that it is located behind the dwelling on Lot 1;
- It is not located in an area of environmental significance;
- No bushland or individual trees will be affected by the proposal;
- The natural landscape setting will be maintained through the provision of landscaped area that exceeds the DCP 2011 requirements. As stated above, the side setbacks allow for dense planting and small/medium sized trees. There are opportunities for landscaping and large trees within the street and rear setbacks; and
- An appropriate stormwater arrangement has been designed and submitted with the development application.

Table 1: Comparison of Compliant and Proposed Envelope

DCP 2011 Chapter	Control	Proposed
B1 Wall Heights	Walls are not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas wholly located within a roof space).	The building envelope proposes a maximum wall height of 7.138m.
B2 Number of Storeys	2 storeys	2 storeys
B5 Min Side Boundary Setback	0.9m	2m
B7 Min Front Boundary Setback	6.5m	6.5m – 7.745m
B9 Rear Setback	6m	6m – 7.448m
C1 Subdivision	Minimum building area: 150 sqm	Lot 1: 182.28 sqm Lot 2: 161.40 sqm
Access	3.5m wide	3.5m wide
C3 Parking Facilities	The controls seek to minimise dominance of car parking structures.	The garage for Lot 1 must be located within the building envelope proposed and must be accessed via a shared driveway. This is an enhanced streetscape outcome to a

DCP 2011 Chapter	Control	Proposed
		traditional residential development, where separate vehicular access is provided. This approach minimises the dominance of car parking structures. The garage for Lot 2 must be located within the building envelope proposed. It is therefore unlikely to be visible from the street.
D1 Total Landscaped Area	Minimum 40%	557.63 sqm (51%)
Lot 1 Landscaped Area		293.95 sqm (62%)
Lot 2 Landscaped Area		263.68 sqm (42% inclusive of access handle or 51% exclusive of access handle)
D2 Private Open Space	Minimum area of private open space required is 60sqm with a minimum dimension of 5m	An indicative area is shown on the plans to demonstrate to Council, how a future dwelling could comply with this control. The proposal does not seek to fix the location of the POS as there may be a position/orientation that achieves compliance. The POS areas are relatively flat and do not encroach on existing timber paling fence/retaining wall at the rear of the site.
D9 Building Bulk	Side and rear setbacks are to be progressively increased as wall height increases. Note: There is no numeric requirement	The envelope provides for the progressive stepping of the side setbacks as wall height increases. This is achieved through a 45-degree angled building plane, measured approximately one storey or 3.1m above ground level (existing).

4.2.2 Clause 4.6(3)(b)

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

Strict compliance with the standard would hinder the attainment of the objects specified in Section 1.3 of the EPA Act, which 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.

Compliance has been readily achieved with the following relevant objectives of the EPA Act:

Environmental Planning and Assessment Act 1979: Section 1.3	
Objective	Assessment
c) to promote the orderly and economic use and development of land,	The rear portion of the site would not be used to its full residential potential without the proposed development. As such, strict compliance with the standard would not allow this suitable development and preclude a positive residential outcome for the site and area. This would in turn prevent, not promote, the orderly and economic development of a sympathetic low density residential development.
d) to promote the delivery and maintenance of affordable housing,	The proposal will ultimately contribute to the housing stock of Belrose whilst maintaining consistency with the density of the locality. The proposal will offer housing diversity to support affordable housing options in the Northern Beaches area.
g) to promote good design and amenity of the built environment	The proposed subdivision includes an Indicative Building Area (DA-004) and Indicative Building Envelope (DA-005). The purpose of these drawings is to provide a three-dimensional building envelope that the future dwellings must adhere to. This can be imposed via a section 88B instrument. Notwithstanding the non-compliance with the 600sqm minimum subdivision lot size, the resulting lots will be able to support future development that complies and improves upon Council's requirements for good design and amenity. This has been demonstrated in Table 1 and discussed in Section 3.5.
h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The future dwellings can be designed to a high standard of design and construction protect the health and safety of occupants, while providing a low maintenance site and buildings for ongoing maintenance considerations in the future.

Strict compliance with Clause 4.1, Minimum Subdivision Lot Size, of the Warringah Local Environmental Plan 2011 would hinder the attainment of the objectives of Clause 4.1 on the basis that:

- The proposed allotments are capable of accommodating future development which is compatible with the density of existing and future development within the locality;
- The future development of Lot 2 will not appear dominant in the public domain as the site slopes moderately to the rear and the building envelope is located behind the dwelling on Lot 1;
- The proposed lots are consistent with the pattern and configuration of existing lots and development in the locality;
- The proposal maximises the landscaped area outside of the building envelopes to protect the landscaped setting;
- The resulting allotments will provide appropriate access and services on the site, notably by a consolidated access arrangement;
- It would provide for additional housing availability and support complimentary uses in the local area;

- The proposal does not constitute overdevelopment, noting that the building envelopes exceed the setback and landscaped area requirements;
- The discrepancy between the minimum subdivision lot size and the actual lot size does not hinder the logical redevelopment of the site for a planned low density residential development;
- It is not located in an area of environmental significance;
- No bushland or individual trees will be affected by the proposal;
- The natural landscape setting will be maintained through the provision of landscaped area that exceeds the DCP 2011 requirements. As stated above, the side setbacks allow for dense planting and small/medium sized trees. There are opportunities for landscaping and large trees within the front and rear setbacks; and
- An appropriate stormwater arrangement has been designed and submitted with the development application.

As demonstrated, there are sufficient environmental planning grounds to justify contravening this development standard in the unique situation of this site and this development.

4.2.3 Clause 4.6(4)(a)(ii)

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

The proposed development is consistent with the objectives of the standard. An assessment of consistency with the objectives of the Zone is provided below:

R2 – Low Density Residential	
Objective	Assessment
To provide for the housing needs of the community within a low density residential environment.	The proposal provides an opportunity for additional housing in a suitable location that respects the low-density residential nature of the area.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	It does not impact on other land uses that provide facilities or services to meet the 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.	Each lot provides a landscaped setting that exceeds the requirements of relevant local provisions and controls.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard and objectives for development within the zone. Accordingly, there can be no quantifiable or perceived public benefit in maintaining the standard.

4.2.4 Clause 4.6(4)(b)

Is the concurrence of the Planning Secretary required, and if yes, has the concurrence of the Planning Secretary has been obtained?

In deciding whether to grant concurrence under Clause 4.6(4)(b), the Planning Secretary must consider under Clause 4.6 (5):

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning;*
- (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.*

In summary:

- The non-compliance will not raise any matter of State or Regional Significance;
- The proposed development is not contrary to the public interest, as detailed above; and
- The applicant is happy to address any other matter required to be considered by the Planning Secretary.

5 Conclusion

In summary, this Clause 4.6 variation request to the Minimum Subdivision Lot Size in the Warringah Local Environmental Plan 2011 satisfies the four tests imposed by Clause 4.6 being:

1. That compliance with the relevant development standard must be unreasonable or unnecessary in the circumstances of the case;
2. That there are sufficient environmental planning grounds to justify contravening the development standard;
3. That the applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3; and
4. That the proposed development would be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the relevant zone.

The Minimum Subdivision Lot Size standard is 600sqm. Proposed Lot 1 measures 476.22sqm and proposed Lot 2 measures 621.75sqm (516.75sqm excluding the access handle). The proposed Lot 2 complies with the standard inclusive of the access handle, however both Lot 1 and Lot 2 (exclusive of the access corridor) present a variation to the standard. For Lot 1 the variation is 20.63% and for Lot 2 the variation is 13.88%. The overall variation is 17.25%.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, as the proposal complies with the *No. 1 Way of the Five Part Test* outlined in *Wehbe*, in that the objectives of the standard are achieved, notwithstanding non-compliance with the standard.

In considering the balance between technical development standard compliance or support for this request to vary the set development standard, it is submitted that, in the proposed form, this unique development and site can achieve the following positive environmental planning outcome/s:

- The proposed development would be in the public interest because it is consistent with the objectives of the Minimum Subdivision Lot Size and the objectives for development within the zone;
- Despite the non-compliance with the minimum lot size control, the proposed subdivision will provide lots that are capable of accommodating future dwellings that will provide suitable amenity for occupants and neighbours;

- The proposed subdivision includes an Indicative Building Area (DA-004) and Indicative Building Envelope (DA-005). The purpose of these drawings is to provide a three-dimensional building envelope that the future dwellings must adhere to. This can be imposed via a section 88B instrument;
- The proposed building envelopes represent an enhanced environmental outcome, as they will ensure that the landscaped area and setbacks significantly exceed the requirements of the Warringah Development Control Plan 2011 (DCP 2011) or State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP);
- The proposed subdivision is consistent with the existing subdivision pattern in the locality, which comprises lots of varying sizes and configurations;
- The proposed subdivision provides additional housing diversity and affordability for the community whilst maintaining a low-density environment; and
- The positive outcomes of the departure from the standard outweigh the negatives which would result from strict adherence to the standard as set out under Minimum Subdivision Lot Size. Importantly, it is considered that a precedent will not be set by supporting the proposed departure as this proposal provides a unique approach to managing future development on the site, being the imposition of a Section 88B Instrument.

Also, while strict adherence to the set development standard is desirable generally, on the merits of this specific case there is the opportunity to achieve a better environmental planning outcome on this site, through the development as proposed.

It is considered that this written request adequately addresses all relevant required matters. It demonstrates that the proposed development is in the public interest because:

- it is consistent with the objectives of the particular standard,
- it is consistent with the objectives for development within the zone,
- it is consistent with the aims of Warringah Local Environmental Plan 2011, and
- it is consistent with the Objects of the EP&A Act.

On the basis of the above, the Northern Beaches Council is able to support the proposed variation to the development standard under the provisions of Clause 4.6 of the LEP and favourably endorse the application.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0849
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Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 1 SP 67337, 1 / 63 - 67 The Corso MANLY NSW 2095
Proposed Development:	Alterations and additions to a commercial premise
Zoning:	Manly LEP2013 - Land zoned E1 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Robblock Pty Ltd
Applicant:	Max Hayson

Application Lodged:	19/07/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	25/07/2023 to 08/08/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 4.78%
Recommendation:	Approval

Estimated Cost of Works:	\$ 720,475.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing commercial premise.

The existing building is a locally listed heritage item under the Manly Local Environmental Plan 2013 and forms part of Heritage Item No. Item I106 - Group of commercial buildings - All numbers. The application involves the demolition and reconstruction of the existing shopfront. The nature of the works are considered 'sensitive development', proposing the demolition of the heritage listed frontage, and such, the application is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination.

No submissions were received during the notification period.

In addition to the development being class as 'sensitive development, the proposal results in a 4.78% variation to the floor space ratio (FSR) development standard.

The 4.6 request for the non-compliance with the floor space standard arises from the minor increase of the building's gross floor area equating to 5.1% (25.08m²), as a result of extending the existing mezzanine level. The variation is contained entirely within the existing building and does not add to the bulk and scale of the building. Given the minor nature of the works, the proposal is considered acceptable.

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

PROPOSED DEVELOPMENT IN DETAIL

Development for alterations and additions to a commercial premise, including signage. The works comprise:

Ground floor:

- Demolition works including the removal of the existing shop-front.
- Internal alterations to create two separate retail premises (Retail 01 and Retail 02) and the separate entrance to Retail 03.

Mezzanine level:

- Partial demolition of the existing mezzanine.
- Internal alterations and additions to create two separate retail premises (Retail 02 and Retail 03), resulting in an additional 28.58m² of gross floor area.

External:

- Construction of new ground floor facade.

Use:

- Retail 01 - convenience store (retail premises)
- Retail 02 - retail shop (retail premises)
- Retail 03 - beautician facility (business premises)

Amended plans

Following a preliminary assessment of the application, Council issued a Request for Information (RFI) letter to the applicant on 15 September 2023, outlining concerns with the application.

The concerns related to Floor Space Ratio, Hours of Operation, and Heritage.

The applicant lodged amended plans and additional information to address the concerns on 20 September 2023.

The amended plans incorporated the following changes:

- An updated gross floor area calculation plan of the entire building.
- Recessed entrances to the three shopfronts.
- Neutral colours on the awning.

Community Participation Plan

The proposed amendments will have a reduced environmental impact on the adjoining properties when compared to the original proposal. The amended plans result in a reduced size development. Therefore, formal 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

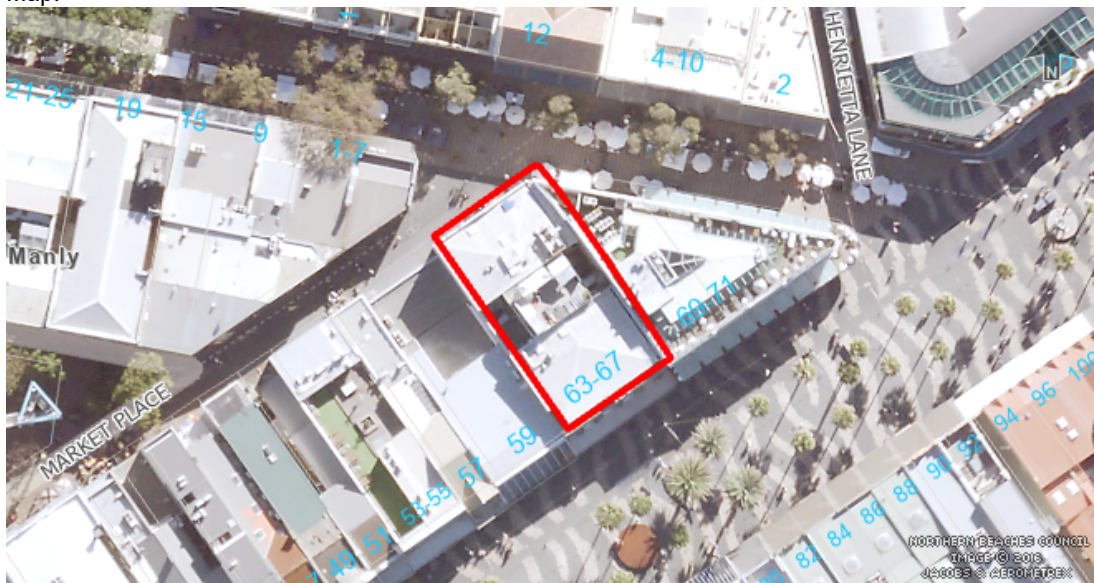
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 5.10 Heritage conservation
 Manly Development Control Plan - 4.2.1 FSR (Consideration of Exceptions including Arcades)
 Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor
 Manly Development Control Plan - 4.2.5.4 Car Parking and Access
 Manly Development Control Plan - 4.4.3 Signage

SITE DESCRIPTION

Property Description:	Lot 1 SP 67337 , 1 / 63 - 67 The Corso MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment which is Strata subdivided into three (3) lots (being Part Lots 1, 2 and 3).

	<p>The site is located at the northern end of The Corso and enjoys frontages to both The Corso and Market Place. Both streets are pedestrianised.</p> <p>The site is generally rectangular in shape with a frontage of 16.385m to the Corso, a frontage of 14.860m to Market Place and an average depth of 27.88m. The site has a surveyed area of 490.3m².</p> <p>The site is located within the E1 Local Centre zone and accommodates a mixed use development comprising retail outlets at the ground and mezzanine floor levels and backpackers' accommodation within the three (3) levels above.</p> <p>The site has a slight downward slope of 0.34m from The Corso to Market Place although this is not noticeable because the topography has been altered to accommodate the existing building.</p> <p>Adjoining and surrounding development is characterised by commercial development comprising retail outlets and the neighbouring three (3) storey hotel immediately to the north.</p>
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Map:



SITE HISTORY

Council's records reveal that the site was used as a retail premises by Woolworths until 1999 when the site was subject to a development application (DA201/98) for alterations and additions to the existing two storey retail building to create a 3 storey development containing retail and backpacker accommodation.

The following application is relevant to the current proposal:

DA2019/1398

This application for "Alterations and additions to an existing building to facilitate shop top housing containing 12 apartments including the construction of a pergola and lift overrun to the roof terrace" approved by the Northern Beaches Local Planning Panel on 12 August 2020.

DA2022/0662

This application for "Change of use to a pub and live entertainment venue, building works and signage" was withdrawn on 12 August 2022.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report. The NSW employment zones reforms have been made and will come into force on 26 April 2023. These reforms will result in this property changing from a B2 Local Centre zone to a E1 Local Centre zone. The proposed use will remain permissible in the new zone.
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)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 25/07/2023 to 08/08/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported with conditions.</p> <p>The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some</p>

Internal Referral Body	Comments
	requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Environmental Health (Food Premises, Skin Pen.)	<p>Supported with conditions.</p> <p>General Comments</p> <p>This application is seeking consent to alter the internal layout of the building. One of the retail units is to be a beauty salon. Appropriate conditions can be applied to ensure compliance with relevant fitout guidelines.</p> <p>Environmental Health recommends approval.</p>
NECC (Coast and Catchments)	<p>Supported with no conditions.</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.10, 2.11 & 2.12); • State Environmental Planning Policy (Biodiversity & Conservation) 2021 • Relevant LEP and DCP clauses. <p>State Environmental Planning Policy (Resilience & Hazards) 2021</p> <p>The subject land has been included on the 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.11 and 2.12 of the CM (R & H) apply for this DA.</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Gyde dated May 2023, the DA satisfies requirements under clause 2.12 of the SEPP R&H.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Manly LEP 2013 and Manly DCP</p> <p>Foreshores Scenic Protection Area Management</p> <p>The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p>

Internal Referral Body	Comments					
	<p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Gyde dated May 2023, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> <p>As such, it is considered that the application does comply with the requirements of the Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> <p>No other coastal related issues.</p>					
NECC (Flooding)	<p>Supported with conditions.</p> <p>The proposal seeks consent for internal fit out and works to the façade of the existing commercial building.</p> <p>The property is affected by the 1% AEP flood extent, PMF Flood extent, Medium Flood Risk Precinct and a H3 Flood life Hazard.</p> <p>Subject to the following conditions, council is satisfied that the proposal is compliant with Section 5.4.3 Flood Prone Land from the Manly DCP 2013 and Clause 5.21(2)(a-e) of the Manly LEP 2013, with consideration of Clause 5.21(3)(a-d) of the Manly LEP 2013.</p>					
Strategic and Place Planning (Heritage Officer)	<p>Supported with conditions.</p> <table><tr><th>HERITAGE COMMENTS</th></tr><tr><td>Discussion of reason for referral</td></tr><tr><td><p>The proposal has been referred to heritage as the subject property is a heritage item, being a part of a group listed Item I106 - Group of commercial buildings - All numbers, The Corso and sits within the C2 - Manly Town Centre Conservation Area. It is also within the vicinity of a number of heritage items:</p><p>Item I110 - New Brighton Hotel - 69–71 The Corso</p><p>Item I233 - Commercial and residential building - 12 Sydney Road</p><p>Item I104 - Street trees - The Corso (from Whistler Street to Sydney Road)</p></td></tr><tr><th>Details of heritage items affected</th></tr><tr><td><p>Details of the heritage items as contained within the Manly Heritage inventory are as follows:</p><p>Item I106 - Group of commercial buildings <u>Statement of significance</u> The streetscape and its special qualities are of major significance to the state. The Corso has important historical links to the</p></td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	<p>The proposal has been referred to heritage as the subject property is a heritage item, being a part of a group listed Item I106 - Group of commercial buildings - All numbers, The Corso and sits within the C2 - Manly Town Centre Conservation Area. It is also within the vicinity of a number of heritage items:</p> <p>Item I110 - New Brighton Hotel - 69–71 The Corso</p> <p>Item I233 - Commercial and residential building - 12 Sydney Road</p> <p>Item I104 - Street trees - The Corso (from Whistler Street to Sydney Road)</p>	Details of heritage items affected	<p>Details of the heritage items as contained within the Manly Heritage inventory are as follows:</p> <p>Item I106 - Group of commercial buildings <u>Statement of significance</u> The streetscape and its special qualities are of major significance to the state. The Corso has important historical links to the</p>
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Internal Referral Body	Comments
	<p>development of tourism and recreation which is still present and likely to continue. It's role as the pedestrian link between harbour and ocean, city and sea - for the tourist, is fundamental to Manly's status as a resort.</p> <p><u>Physical description</u></p> <p>The Corso acts as a low scale horizontal corridor which steps down from the harbour to the ocean. The atmosphere of The Corso is of a 19th century place. Its special qualities include the contrasts of horizontal (low scale architecture) and vertical (planting) dimensions, and urban and natural elements.</p> <p>C2 - Manly Town Centre Conservation Area</p> <p><u>Statement of significance</u></p> <p>The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of Manly as a peripheral harbor and beachside village in the fledgling colony of New South Wales. This significance is enhanced by its role as a day-trip and holiday destination during those early years, continuing up to the present time, and its association with H G Smith, the original designer and developer of the TCCA as it is today. The physical elements of the TCCA reflect this early development and its continued use for recreational purposes, most notably the intact promenade quality of The Corso and its turn of the century streetscape, as well as key built elements such as hotels, and remaining original commercial and small scale residential buildings.</p> <p>Item I110 - New Brighton Hotel</p> <p><u>Statement of significance</u></p> <p>This building is an example of exotic Egyptian-like motifs and Inter-war Free Classical style. The hotel is of major significance due to its contribution to the streetscape, its visual/textural interest and its association with early 20th century development of the resort. An unusual design utilising exotic Egyptian-like motifs appropriate to the resort location such as columns faintly reminiscent of the Brighton Pavilion. The building is an important feature on the corner of Sydney Rd and the Corso and its eclectic design contributes to the rich collection of architectural styles in the streetscape of the Corso.</p> <p>Item I233 - Commercial and residential building</p> <p><u>Statement of significance</u></p> <p>The building reflects its former use as a fire station. It has a strong presence in the Sydney Road streetscape and contributes to the overall cultural heritage significance and character of the Town Centre Conservation Area.</p> <p><u>Physical description</u></p> <p>Two storey, brick rendered building with parapet. The former Fire Station was designed in Federation Free style. The building, although now redeveloped, retains its picturesque facade that features a curved parapet, heavily moulded entablature and group</p>

Internal Referral Body	Comments																					
	<p>of three arch headed, elongated windows. The words 'Metropolitan Fire Brigade 1897' are embossed on the parapet with 'Manly' below. The windows are timber framed double hung with round headed highlight and multiple small sashes. The face brickwork is now painted but highly contrasted with render, especially the detail such as voussoirs. The adjoining wing to the south-east appears to have been a later addition of face brickwork with similar style windows and entablature but without a high parapet.</p> <p>Item I104 - Street trees</p> <p><u>Statement of significance</u> Part of earliest planting on The Corso c.1850's by H.G. Smith. Historic and aesthetic importance to the streetscape.</p> <p><u>Physical description</u> Centre planting of Ficus Macrophylla (Moreton Bay Fig) Remnant Palm planting (Phoenix Canariensis) of 1928.</p> <table><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>SEPP (Biodiversity and Conservation) 2021</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>No</td><td></td></tr></table> <p>Consideration of Application</p> <p>The proposal is seeking consent for alterations and additions to the existing building to facilitate a change the use of the existing ground floor retail at Unit 1 / 63-67 The Corso, Manly into three commercial tenancies requiring replacement shopfronts and internal works. The existing shopfront is proposed to be replaced with slim metal-framed glazed storefronts with a small section of wall above the shopfronts. Heritage supports the following statement from the HIS, submitted with this application: "<i>As an alternative to reconstruction, a shopfront design interpretive of the original interwar version could be proposed. This occurred with an earlier scheme reviewed by the author of this report when only two tenancies were proposed. It included recessed entrances and low-tiled stall boards. From a heritage impact perspective, it was preferable.</i>"</p> <p>The proposal should revise the shopfront treatment to comply with the controls of the related parts of Manly DCP 2013 including the</p>	Other relevant heritage listings			SEPP (Biodiversity and Conservation) 2021	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	
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Other	No																					

Internal Referral Body	Comments
	<p>following controls:</p> <ul style="list-style-type: none"> • <i>Manly DCP 2013 - Schedule 6 - The Corso: Site Specific Controls</i> require the following for 63-67 The Corso: <ul style="list-style-type: none"> • <i>re-paint façade to highlight the Art Deco detailing.</i> • <i>reconstruct ground floor shops as opportunity arises.</i> • <i>Manly DCP 2013 - 5 Special Character Areas and Sites - 5.1.2 The Corso</i> require specific controls for developments located within The Corso including the following: <p><i>5.1.2.13 Shop-fronts are to be Reinstated</i></p> <ul style="list-style-type: none"> • <i>a) Where shop-fronts have been removed and replaced with shuttered openings, the reinstatement of shop-fronts is supported for aesthetic and historic reasons. New Shuttered openings will not be permitted.</i> • <i>b) New shop-fronts should comprise a 'frame' established by masonry ends read as vertical continuations of the façade above, and by a solid horizontal plinth between the ground and the window sill. The design of the space within this frame can reflect the use of the premises, and utilise contemporary design. See Figure 51 - Shop-fronts within a masonry frame.</i> <p>The proposed external colours should also be revised to remove the proposed awning colour "Dulux Monument" from the external finishes schedule as colours should be selected with an emphasis on light and neutral colours that are based on historical evidence and harmonise. Dark colours, such as black and grey, are not considered appropriate within The Corso.</p> <p>Revised comments - 05 October 2023</p> <p>Amended drawings, received on 20 September 2023, have resolved the main concern that Heritage had with the proposal, by providing recessed entrances and low-tiled stall boards to the proposed shopfront. The amended colour scheme is also considered to not have an adverse impact within the heritage context.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No</p>

Internal Referral Body	Comments
	Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes

External Referral Body	Comments
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 65 - Design Quality of Residential Apartment Development

SEPP 65 – Design Quality of Residential Apartment Development states the following:

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

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

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

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

(c) the building concerned contains at least 4 or more dwellings.

Considering that the proposal mainly involves internal alterations and minor cosmetic changes to the ground floor commercial premise of the four-story mixed-use development, it does not fit into the aforementioned categories. Moreover, it does not constitute a significant redevelopment since the overall height and building footprint remain unchanged.

Accordingly, no further consideration of this Policy is required in this instance.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock
 - ii) platform for members of the public, including persons with a disability,
 - iii) overshadowing, wind funnelling and the loss of views from public places to
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
 - b) is satisfied that:

- i) the development is designed, sited and will be managed to avoid an
 - ii) adverse 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 seeks consent for alterations to an existing commercial premise to create three new tenancies, along with upgrades to the existing shop front. The existing built form, including footprint will remain unchanged. The limited scope of works will ensure the coastal use area will be unaffected by the proposed works, ensuring access to and along the foreshore is maintained, while the visual amenity is also unaffected. The works will not adversely impact on overshadowing, views, wind funnelling, while retaining the heritage aspects of the site and wider area. Council is satisfied that the development has been designed, sited and managed to avoid impact on the provisions of subclause (a).

Division 5 General

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

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

Comment: The limited scope of works will ensure the development will not increase risk of coastal hazards.

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: N/A

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

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for 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.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	10m	Unchanged	N/A	Yes
Floor Space Ratio	FSR: 2.5:1 (1,225.75m ²)	2.6:1(1,284.28m ²)	4.78%	No
Gross Floor Area in certain areas	Min. 25% GFA as Commercial (321.07m ²)	34.9% (447.59m ²)	N/A	Yes
	Max. 1,000m ² per premises	447.59m ²	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
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
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes
6.16 Gross floor area in Zone B2	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	2.5:1 (1,225.75m ²)
Proposed:	2.6:1(1,284.28m ²)
Percentage variation to requirement:	4.78%

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).

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *The proposed variation to the floor space ratio development standard assists in promoting "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" as it will renew and reuse an existing building, maximising the social and economic benefits that can be derived from it.*
- *The development assists in promoting "the orderly and economic use of land" by using land that contains built infrastructure and services.*
- *The variation to the FSR development standard does not result in any amenity impacts to the Corso or adjoining properties.*

The justification provided in the request to vary Clause 4.4 (Floor Space Ratio) is considered to be acceptable in that, the variation is contained entirely within the existing building and does not add to the bulk and scale of the building. Overall, the requested variation is reasonable in terms of its impacts and strict compliance with this development standard would not provide a net benefit to the immediate locality. In this regard, the request has satisfactorily justified the variations against the objectives of the respective Development Standard and the zone.

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 E1 Local Centre 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 additional floor space is contained within the existing building and is a result of extending the mezzanine level. In this regard, the development retains the overall bulk and scale of the existing building when viewed from street level.

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 development does not involve any major external works and therefore does not obscure important landscape and townscape features.

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

Comment:

As above, the additional floor is contained within the existing building and will not affect the visual relationship between new development and the existing character and landscape of the area.

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

Comment:

The development would not cast any additional shadow nor present any overlooking opportunities into surrounding residential or commercial buildings. Furthermore, through the retention of the existing building, the development will not further limit any view sharing to and from private and public spaces.

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

Comment:

The development enhances the existing retail/commercial activities on the ground floor which will provide local services and employment opportunities within the Centre.

Zone objectives

The underlying objectives of the E1 Local Centre zone are:

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*

Comment:

The proposed redevelopment of the existing commercial premise will provide a range of retail and business uses that serve the needs of the community.

- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*

Comment:

The proposed redevelopment of the existing commercial premise will provide three new tenancies that generates employment opportunities and economic growth within the Manly CBD.

- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*

Comment:

The proposal does not involve any works to the existing residential areas of the building.

- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*

Comment:

The proposal retains commercial uses on the ground floor.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

Comment:

The proposed uses, subject to the recommended conditions are not anticipated to give rise to adverse noise or odour impacts.

- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*

Comment:

The proposed development has been designed with diverse and engaging street frontages, incorporating a mix of retail, and business uses to attract pedestrian traffic and contribute a vibrant streetscape.

- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

Comment:

The works are largely internal and will not alter the existing built form.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E1 Local Centre zone.

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

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

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.

5.10 Heritage conservation

The subject site is part of a group listed heritage item and located within the Manly Town Centre Heritage Conservation Area.

In accordance with clause 5.10(4) of the Manly LEP 2013, the consent authority must consider the effect of the proposed development on the heritage significance of the item or area concerned prior to granting consent to the proposal. In this regard, the proposal has been considered by Council's Heritage Officer who is satisfied the proposal is acceptable subject to conditions. Detailed commentary from Council's Heritage Officer is provided in the 'Referrals' section of this report.

Manly Development Control Plan

Built Form Controls

The proposal seeks approval for internal fitout works, including upgrade to the existing shop front and provision of new signage. The existing built form, including setbacks, wall height and other controls remains unchanged.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	No	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	No	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
4.2.5.3 Security Shutters	Yes	Yes
4.2.5.4 Car Parking and Access	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.3 Signage	Yes	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.1.1 General Character	Yes	Yes
5.1.2 The Corso	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

4.2.1 FSR (Consideration of Exceptions including Arcades)

The floor space ratio variation is discussed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of MLEP 2013.

4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor

The proposed development includes a minor increase in floor space due to squaring off the existing mezzanine level. It should be noted that the existing development does not provide for any vehicular parking, as the site is located on The Corso and Market Place, which are both accessed by pedestrians only.

Objective 1) To ensure there is adequate provisions for car parking access and loading in future development and redevelopment in all business zones.

Comment:

The proposed development will not lead to an increase in traffic generation compared to the existing

development. Additionally, the current development on the site does not include any off-street parking or loading facilities. Moreover, considering the nearby pedestrianised area, providing off-street parking or loading facilities would adversely affect pedestrian amenity in the vicinity.

Objective 2) To minimise conflicts between pedestrian and vehicular movement systems within the business areas.

Comment:

As no vehicular parking is proposed or existing in this instance, the proposed development will not result in any conflict between pedestrian and vehicular movement in the E1 Local Centre Zone.

4.2.5.4 Car Parking and Access

The proposed development, which comprises change of use, and internal fit outs, will technically result in a numerical non-compliance in relation to vehicular parking. This non-compliance is addressed, in detail, elsewhere in this report, under section Clause 4.2.4 of the MDCP 2013.

4.4.3 Signage

The proposal includes indicative signage locations on the southern elevation. However, details regarding the content of these signs have not been provided under this application. Therefore, no approval is granted under this Development Consent for signs (as defined under Manly Local Environment Plan 2013 and State Environmental Planning Policy (Transport and Infrastructure) 2021. A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

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 \$7,205 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$720,475.

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.

In summary, the application has been assessed with regard to the relevant Manly LEP and DCP controls which guide the future desired character of the site and locality, along with the public submission received during the notification period.

Subject to the recommended conditions of consent, it is considered that the proposal will result in a development that displays reasonable size, scale and density which is compatible with the existing site and surrounding development and will not result in unreasonable amenity impacts to surrounding properties. Overall, the proposal is considered a reasonable response to the site constraints and relevant planning controls.

Accordingly, the application is referred to the NBLPP with a recommendation for approval. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

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 DA2023/0849 for Alterations and additions to a commercial premise on land at Lot 1 SP 67337, 1 / 63 - 67 The Corso, 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

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA02	01	Existing/Demolition Plan	Grain Architects	15 June 2023
DA03	02	Proposed Ground Floor Plan	Grain Architects	18 September 2023
DA04	01	Proposed Mezzanine Level	Grain Architects	15 June 2023
DA08	03	Elevations South	Grain Architects	25 October 2023
DA09	02	Section 01	Grain Architects	18 September 2023
DA10	01	Section 02	Grain Architects	15 June 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Waste Management Plan	-	Max Hayson	19 April 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	28 July 2023

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

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

3. **Approved Land Use - Retail 01**

Nothing in this consent shall authorise the use of Retail 01 as detailed on the approved plans for any land use of the site beyond the definition of a **Shop**, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

Shop means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop and neighbourhood supermarket, but does not include food and drink premises or restricted premises.

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. **Approved Land Use - Retail 02**

Nothing in this consent shall authorise the use of Retail 02 as detailed on the approved plans for any land use of the site beyond the definition of a **Shop**, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

Shop means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop and neighbourhood supermarket, but does not include food and drink premises or restricted premises.

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.

5. **Approved Land Use - Retail 03**

Nothing in this consent shall authorise the use of Retail 03 as detailed on the approved plans for any land use of the site beyond the definition of a **Business Premises**, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

business premises means a building or place at or on which—

(a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or
(b) a service is provided directly to members of the public on a regular basis,
and includes funeral homes, goods repair and reuse premises and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.

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.

6. **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.

7. 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.

8. **No Approval for any Signage**

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

Reason: Control of signage.

FEES / CHARGES / CONTRIBUTIONS

9. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$7,204.75 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 \$720,475.00.

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.

10. **Security Bond**

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

11. **Building components and structural soundness**

B1 - All new development below the Flood Planning Level of 5.85m AHD shall be designed and constructed from flood compatible materials

B3 - All new and existing electrical equipment, power points, wiring and connections must be located above the Flood Planning Level of 5.85m AHD, 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 for approval.

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.

12. **Storage of Goods**

Storage areas for hazardous or potentially polluting materials shall not be located below the

Flood Planning Level of 5.85m AHD unless adequately protected from floodwaters in accordance with industry standards.

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

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.

13. Access & Egress

The proposed building work is required to comply with Part D of the Building Code of Australia other than where a Performance Solution is proposed. In this regard details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for building occupant safety.

14. Access and Facilities for Persons with Disabilities

Access and facilities to and within the building are to be provided as required for Persons with a Disability in accordance with the Building Code of Australia and AS1428. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

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

15. Waste Management Plan

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

16. Compliance with Standards

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. **Skin penetration fit out certification**

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from a suitably qualified professional that the design, construction and fit out of the skin penetration and beauty salon premises is compliant with the relevant and current guidelines including:

- Public Health Act 2010
- Public Health Regulation 2022
- Local Government (General) Regulations 2021
- Australian Standard: AS/NZS 4815:2006 Office-based health care facilities—
Reprocessing of reusable medical and surgical instruments and equipment, and
maintenance of the associated environment.

Reason: To ensure compliance with legislation and to protect public health and safety.

DURING BUILDING WORK

18. **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

19. **Registration with regulatory authority**

The skin penetration business must be registered with the Local Council prior to the Occupation Certificate being issued.

Reason: Legislative requirement.

20. **Building Components and Structural Soundness**

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 5.85m 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.

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

21. **Clinical Waste Contractor**

All clinical waste produced by the premises is to be transported to and disposed of within an appropriately licensed waste facility through a contract with a suitably qualified waste contractor.

Reason: Responsible disposal management of clinical waste.

22. **Deliveries and waste service collections**

Deliveries and waste service collections shall only occur after 6am and prior to 10pm on any day.

Reason: Reason: To minimise the impacts of noise on neighbouring premises.

23. **On-going operation of skin penetration premises**

The ongoing operation of the skin penetration and beauty salon premises including all associated equipment must be maintained in accordance with the relevant and current guidelines including:

- Public Health Act 2010
- Public Health Regulation 2022
- Local Government (General) Regulations 2021
- Australian Standard: AS/NZS 4815:2006 Office-based health care facilities—
Reprocessing of reusable medical and surgical instruments and equipment, and
maintenance of the associated environment.

Reason: To ensure compliance with legislation and to protect public health and safety.

24. **Sharps waste management**

All commercial premises that require the use of sharps must provide adequate sharps waste disposal facilities. Such premises must be provided with sharps waste disposal containers on site that adequately contain all sharps waste produced and is compliant with AS 4031 – 1992 - Non-reusable containers for the collection of sharp medical items used in health care areas.

Reason: To ensure adequate provisions are made for the safe disposal, collection and transport of used sharp objects and to minimise to risk of infectious waste to public health.

25. **Hours of Operation - Shop (Retail 01)**

The hours of operation for the Shop (Retail 01) are to be restricted to:

- Monday to Sunday – 6am - 12am (next day).

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

26. **Hours of Operation - Shop (Retail 02)**

The hours of operation for the Shop (Retail 02) are to be restricted to:

- Monday to Sunday – 6am - 10pm.

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

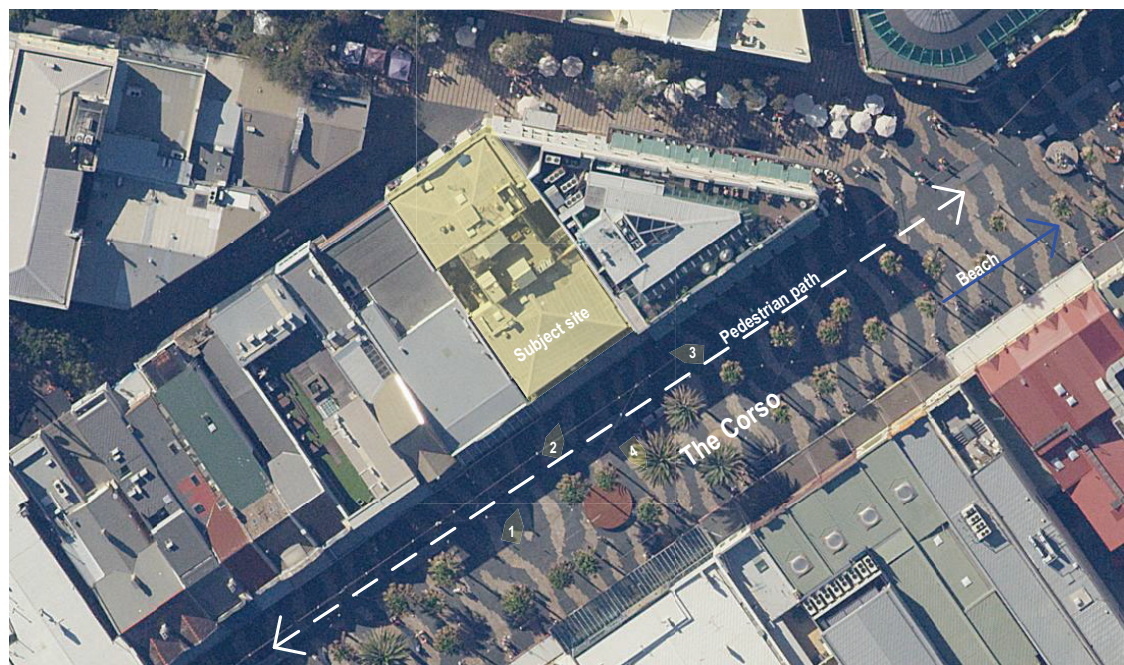
27. **Hours of Operation - Business Premise (Retail 03)**

The hours of operation for the Business Premise (Retail 03) are to be restricted to:

- Monday to Sunday – 6am - 10pm.

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.



1 Site Analysis



Image 01



Image 02



Image 03



Image 04

NOTE:
1. Contractors to verify all dimensions on site before any shop drawings or work is commenced.
2. Any discrepancies between drawings of differing scales or between drawings and specification where appropriate to be notified to superintendent and/or the architect for decision.
3. Eased dimensions to be taken in preference to scaled dimensions.
4. Critical dimensions to be taken from site.
5. This drawing to be read in conjunction with the specification and engineers' drawings.

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REV	DESCRIPTION	BY	DATE
01	DA Submission		15/9/2023

 **grain architects**
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M: 0403 014 497 E: tw@grainarchitects.com.au
Registered Architect NSW 10995

CLIENT:
INITIUM MANAGEMENT

ADDRESS:
63-67 The Corso Manly NSW

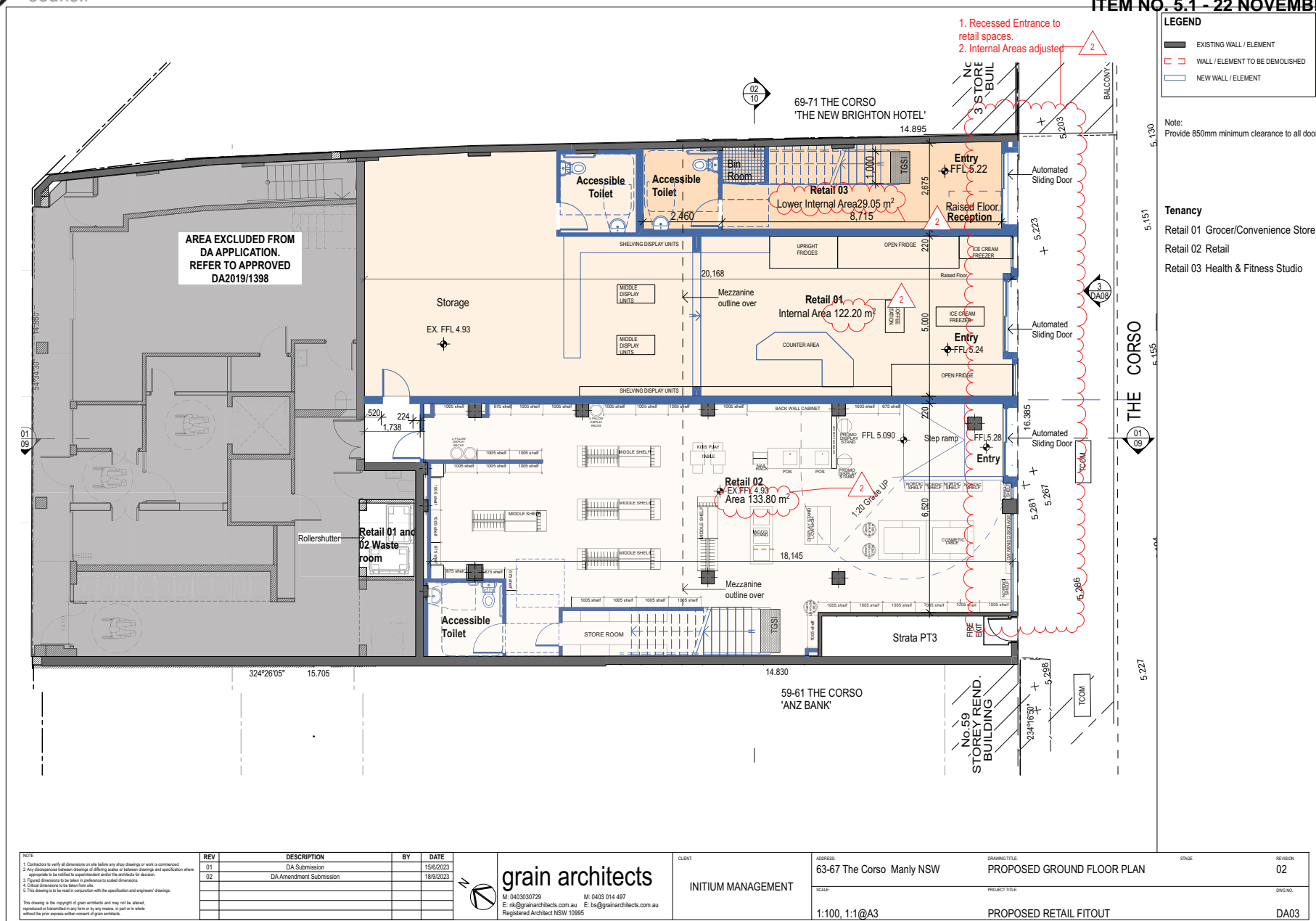
DRAWING TITLE:
SITE ANALYSIS

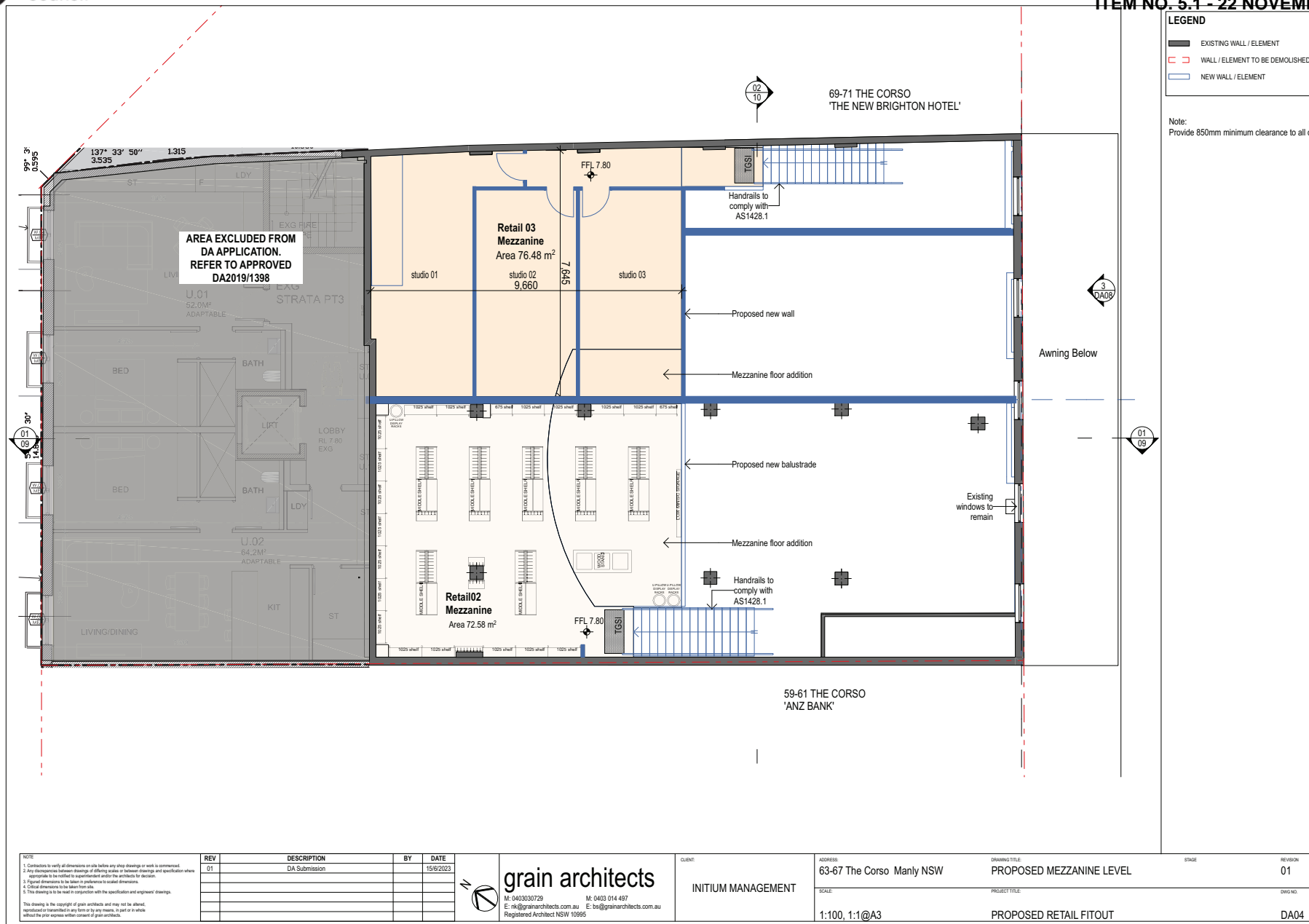
STAGE:
REVISION:
01

SCALE:
1:1@A3

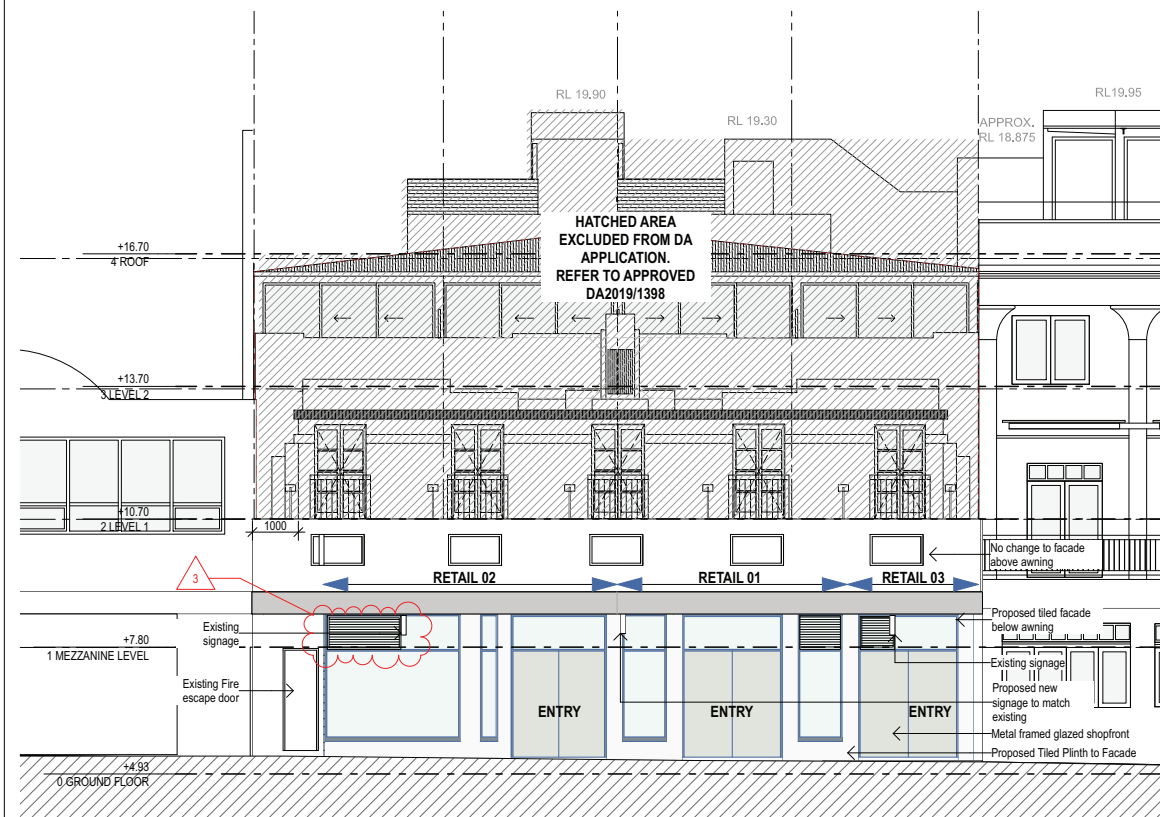
PROJECT TITLE:
PROPOSED RETAIL FITOUT

DWG NO:
DA01





External Finishes Schedule



LEGEND

	EXISTING WALL / ELEMENT
	WALL / ELEMENT TO BE DEMOLISHED
	NEW WALL / ELEMENT

NOTE:
1. Contractors to verify all dimensions on site before any shop drawings or work is commenced.
2. Any discrepancies between drawings of differing scales or between drawings and specification where appropriate to be notified to superintendent and/or the architect for decision.
3. Elected dimensions to be taken in preference to scaled dimensions.
4. Critical dimensions to be taken from site.
5. This drawing is to be read in conjunction with the specification and engineers' drawings.
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REV	DESCRIPTION	BY	DATE
01	DA Submission		15/6/2023
02	DA Amendment Submission		18/9/2023
03	DA Amendment Submission - Retail 02 facade grille extended		25/10/2023



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Registered Architect NSW 10995

CLIENT: INITIUM MANAGEMENT

ADDRESS: 63-67 The Corso Manly NSW

SCALE: 1:1, 1:100, 1:50@A3

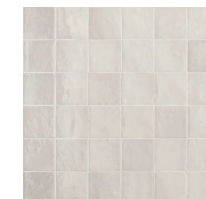
DRAWING TITLE: ELEVATIONS SOUTH

PROJECT TITLE: PROPOSED RETAIL FITOUT

STAGE:

REVISION: 03

DWG NO: DA08



External Wall
Tile finish
100x100mm
Selection: Zellij Colour Nimbus
Code (P1)



Awning
Dulux
Colour: Gully



External Entry Floor
Tile finish
Terrazzo look
Selection: T2 Parchment Grip



Proposed tiled plinth and facade below awning

Recessed entry to retail areas

GYDE

Clause 4.6 Request - Floor Space Ratio

Manly Local Environmental Plan 2013

Unit 1 63 – 67 The Corso, Manly

submitted to Northern Beaches Council on behalf of Initium Management

2 November 2023

GYDE.COM.AU



Clause 4.6 Request – Floor Space Ratio

This report was prepared by:

Director: Mark Schofield
Project Planner: Hannah Keeler
Project: 22-201
Report Version: Final - Amended post lodgement

Disclaimer

This report has been prepared by Gyde Consulting with input from a number of other expert consultants (if relevant). To the best of our knowledge, the information contained herein is neither false nor misleading and the contents are based on information and facts that were correct at the time of writing. Gyde Consulting accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance in information in this publication.

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TABLE OF CONTENTS

1. EXECUTIVE SUMMARY	4
2. STANDARD TO BE VARIED	5
3. EXTENT OF VARIATION.....	6
3.1. Proposed Floor Space Exceedances.....	6
4. UNREASONABLE OR UNNECESSARY	7
4.1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.	8
4.2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;.....	9
4.3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;	9
4.4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; ...	9
4.5. The zoning of the land is unreasonable or inappropriate.....	9
5. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS	10
6. PUBLIC INTEREST	11
7. STATE OR REGIONAL ENVIRONMENTAL PLANNING.....	13
8. CONCLUSION	14

FIGURES

Figure 1: Extract MLEP 2013 – FSR map (Source: NSW legislation).....	5
Figure 2: Existing GFA calculations (Source: Grain Architects).....	6
Figure 3: Proposed ground floor and mezzanine level (Source: Grain Architects)	7

TABLES

Table 1 Consistency with Objectives of Clause 4.4 of WLEP.....	8
Table 2 Consistency with E1 Local Centre zone objectives	11



Clause 4.6 Request – Floor Space Ratio

1. EXECUTIVE SUMMARY

This is a written request prepared in accordance with clause 4.6 of the *Manly Local Environmental Plan 2013* to justify a variation to the Floor Space Ratio (FSR) development standard. The request relates to a development application (DA) for internal fit out, façade works and use of retail 03 as a business premises to create three tenancies; two retail premises and one business premises within Unit 1 / 63-67 The Corso, Manly (Lot 1 SP 67337)(the site).

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards to particular development, and to achieve better outcomes for, and from, development by allowing flexibility in particular circumstances.

As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application, and accordingly we respectfully submit that Council ought to be satisfied that this variation request addresses all of the matters required by clause 4.6(3). As such, it would be appropriate to exercise the flexibility provided by clause 4.6 in the circumstances of this application.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and various recent decisions in the New South Wales Land and Environment Court (LEC) and New South Wales Court of Appeal (Appeals Court).

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard (see *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Rebel/MH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130) and *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245:

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case [clause 4.6(3)(a)];
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard [clause 4.6(3)(b)]; and
3. That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is proposed to be carried out [clause 4.6(4)].

This request considers that compliance with the FSR development standard is unreasonable and unnecessary in the circumstances of the proposed development because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The requirement to comply with the development standard is unreasonable and unnecessary in the circumstances as the proposed additional GFA is minor in area and is located within the existing building envelope. There is therefore no change in the buildings bulk and scale.

In addition, this variation demonstrates that there is a lack of adverse environmental impacts, consistency with the relevant objects of the *Environmental Planning and Assessment Act 1979* and is consistent with the relevant aims of the MLEP 2013.

This request also addresses the requirement for concurrence of the Secretary as required by Clause 4.6(4)(b). It is therefore considered appropriate in these circumstances to grant the clause 4.6 variation request.

Clause 4.6 Request – Floor Space Ratio

2. STANDARD TO BE VARIED

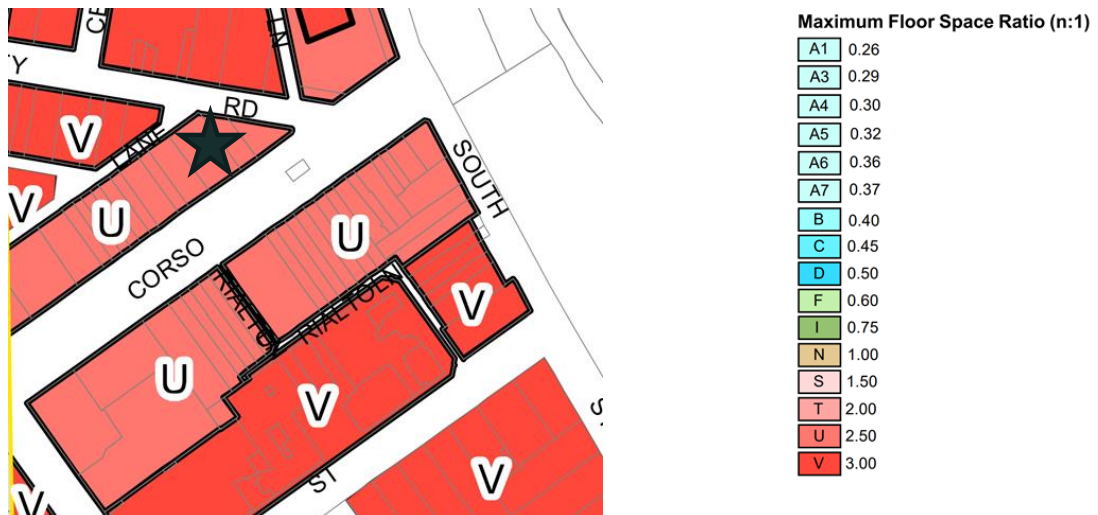
The standard that is proposed to be varied is the Floor Space Ratio development standard which is set out in clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP) as follows:

4.3 Floor Space Ratio

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

The site is in an area designated as "U" on the FSR map and a 2.5:1 FSR control applies (Refer to Figure 1 below).

Figure 1: Extract MLEP 2013 – FSR map (Source: NSW legislation)



The development standard to be varied is not identified under sub-clause 4.6(8). Therefore, it is not excluded from the operation of clause 4.6 of the LEP.

Clause 4.6 Request – Floor Space Ratio

3. EXTENT OF VARIATION

3.1. Proposed Floor Space Exceedances

Clause 4.4(2) of the MLEP prescribes a maximum FSR of 2.5:1 on the subject site. The site has area of 490.3m² and the existing building (all strata lots) contains 1258.25m² of gross floor area. The site as existing therefore has a FSR of 2.56:1, exceeding the FSR development standard.



Figure 2: Existing GFA calculations (Source: Grain Architects)

It is proposed as part of the subject development application to increase the gross floor area by 25.08m². This would increase the total gross floor area on the site to 1,283.33m², which equates to a FSR of 2.62:1. The proposed additional floor area is predominantly located on the mezzanine level of Retail 02 and 03. It is located entirely within the envelope of the existing building.

Clause 4.6 Request – Floor Space Ratio

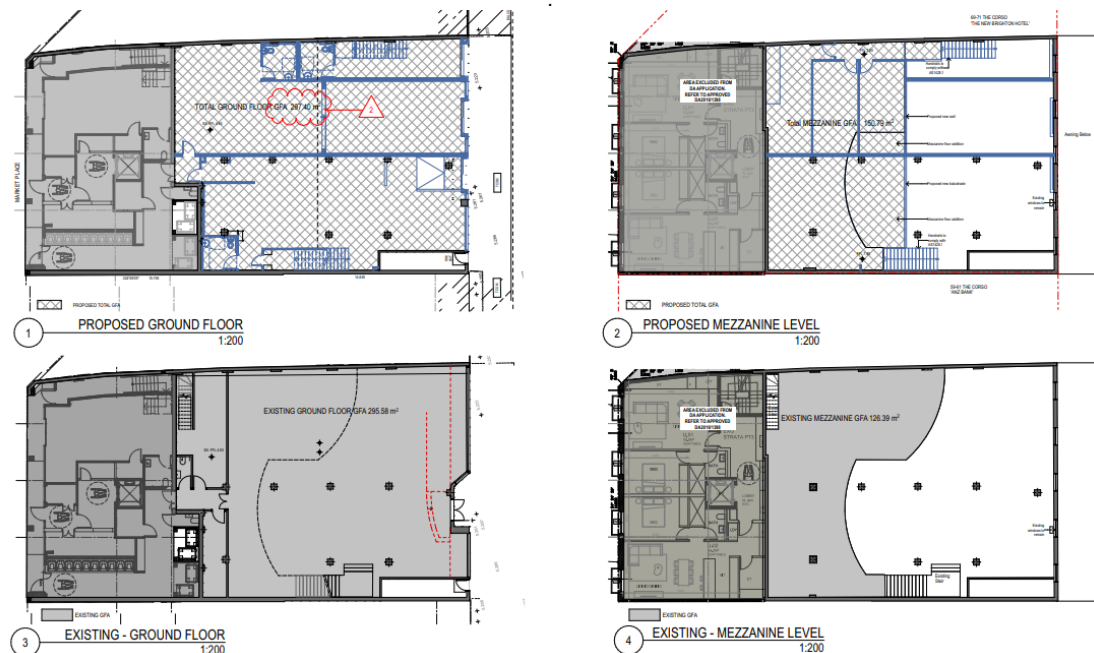


Figure 3: Proposed ground floor and mezzanine level (Source: Grain Architects)

4. UNREASONABLE OR UNNECESSARY

In this section it is demonstrated why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by clause 4.6(3)(a) of the LEP.

The Court has held that there are at least five different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. See *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe).

The five ways of establishing that compliance is unreasonable or unnecessary are:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard; (First Test)
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary; (Second Test)
3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; (Third Test)
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 the standard is unreasonable and unnecessary; (Fourth Test) and

Clause 4.6 Request – Floor Space Ratio

5. The zoning of the land is unreasonable or inappropriate. (Fifth Test)

It is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

Nonetheless, we have considered each of the ways as follows.

4.1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The following table considers whether the objectives of the development standard are achieved notwithstanding the proposed variation (First test under *Wehbe*).

Table 1 Consistency with Objectives of Clause 4.4 of WLEP.

OBJECTIVE	DISCUSSION
4.4 Floor Space Ratio buildings	
(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	The proposed additional GFA is located within the existing building envelope and as such it does not result in any change in bulk and scale, nor alter the buildings relationship to the streetscape.
(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features	The proposed additional GFA is located within the existing building envelope and as such does not result in any obstruction of any landscape or townscape features.
(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,	The proposed additional GFA is located within the existing building envelope and does not change the buildings visual relationship to the area.
(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain	The proposed additional GFA is located within the existing building envelope and will not impact on the enjoyment of adjoining lands.
(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.	The proposed development will renew an existing commercial space within the Corso.

As demonstrated in Table 1 above, the objectives of the FSR development standard are achieved notwithstanding the proposed variation.



Clause 4.6 Request – Floor Space Ratio

In accordance with the decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118, therefore, compliance with the floor space ratio development standard is demonstrated to be unreasonable or unnecessary and the requirements of clause 4.6(3)(a) have been met on this way alone.

For the sake of completeness, the other recognised ways are considered as follows.

4.2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;

The underlying objective or purpose is relevant to the development and therefore is not relied upon.

4.3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;

This basis is not relied upon.

4.4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary;

The standard has not to our knowledge been abandoned by Council actions in this case and so this reason is not relied upon.

4.5. The zoning of the land is unreasonable or inappropriate.

The zoning of the land is reasonable and appropriate and is therefore not relied upon.

5. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

The environmental planning grounds to justify the departure of the Floor Space Ratio standard are as follows:

- **Object 1.3(a) of the EP&A Act** - The proposed variation to the floor space ratio development standard assists in promoting "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" as it will renew and reuse an existing building, maximising the social and economic benefits that can be derived from it.
- **Object 1.3(c) and 1.3(d) of the EP&A Act** - The development assists in promoting "the orderly and economic use of land" by using land that contains built infrastructure and services.
- Importantly, the variation to the FSR development standard does not result in any amenity impacts to the Corso or adjoining properties.

For the reasons contained in this application there are sufficient environmental grounds to justify the variation to the development standard, as required in Clause 4.6(3)(b).

Clause 4.6 Request – Floor Space Ratio

6. PUBLIC INTEREST

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. This is required by clause 4.6(4)(a)(ii) of the LEP.

In section 4 it was demonstrated that the proposed development overall achieves the objectives of the development standard notwithstanding the variation of the development standard (see comments under "public interest" in Table 1).

The table below considers whether the proposal is also consistent with the objectives of the zone.

Table 2 Consistency with E1 Local Centre zone objectives

OBJECTIVES OF E1 LOCAL CENTRE ZONE	DISCUSSION
<ul style="list-style-type: none"> To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area. 	The proposed development is for retail and business premises that can accommodate uses that meet the needs of the community and visitors.
<ul style="list-style-type: none"> To encourage investment in local commercial development that generates employment opportunities and economic growth. 	The proposal relates to the fit out of 3 commercial premises. The additional floor space will provide increased functionality of these premises, whilst remaining within the existing building envelope. This will generate employment opportunities within the Manly town centre and contribute to economic growth.
<ul style="list-style-type: none"> To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area. 	This proposal does not relate to residential development. The proposed commercial premises will provide services to cater to the needs of residents within the area.
<ul style="list-style-type: none"> To encourage business, retail, community and other non-residential land uses on the ground floor of buildings. 	The proposal involves the fit out and use of 3 business and retail premises on the ground floor of the building. These premises will activate the street frontage and provide a diverse range of services for the community. The additional floor space remains within the building envelope and will not impact on the overall bulk and scale of the development.
<ul style="list-style-type: none"> To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery. 	The proposed additional floor space will not result in any conflict between land uses in the zone and will not result in any adverse amenity impacts.
<ul style="list-style-type: none"> To ensure that new development provides diverse and active street frontages to attract 	The proposal includes 3 business and retail shopfronts which will contribute to the activation of The Corso street frontage and attract



Clause 4.6 Request – Floor Space Ratio

OBJECTIVES OF E1 LOCAL CENTRE ZONE	DISCUSSION
pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.	pedestrian activity.
<ul style="list-style-type: none"> To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment. 	The proposal involves a built form sympathetic to the urban form and architectural treatment of surrounding land uses. The additional floor space will not impact upon the built form as it remains within the building envelope.

As demonstrated in Table 2, the proposal is consistent with the objectives of the zone and in Section 4 it was demonstrated that the proposal is consistent with the objectives of the development standard. According to clause 4.6(4)(a)(ii), therefore, the proposal is in the public interest.



Clause 4.6 Request – Floor Space Ratio

7. STATE OR REGIONAL ENVIRONMENTAL PLANNING

This section considers whether contravention of the development standard raises any matter of significance for State or regional environmental planning, the public benefit of maintaining the development standard, and any other matters required to be taken into consideration by the Secretary before granting concurrence required by clause 4.6(5).

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

As demonstrated already, the proposal is consistent with the objectives of the zone and the objectives of the development standard and in our opinion, there are no additional matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

Finally, we are not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.



Clause 4.6 Request – Floor Space Ratio

8. CONCLUSION

This submission requests a variation, under clause 4.6 of the *Manly Local Environmental Plan 2013*, to the FSR development standard and demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- The development achieves the objectives of the development standard (Webb Test 1) and is consistent with the objectives of the E1 Zone;
- There are sufficient environmental planning grounds to justify the contravention;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard; and
- The variation does not raise any matter of State or Regional Significance.

The consent authority can be satisfied to the above and that the development achieves the objectives of the development standard and is consistent with the objectives of the E1 Zone notwithstanding non-compliance with the floor space ratio standard and is in the public interest.

The concurrence of the Secretary can be assumed in accordance with Planning Circular PS 18-003.

On this basis, therefore, it is appropriate to exercise the flexibility provided by clause 4.6 in the circumstances of this application.