

# AGENDA

## DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held in the Walamai Room, Northern Beaches Council, Dee Why

**FRIDAY 8 SEPTEMBER 2017**



**Ashleigh Sherry**  
**Manager Business System and Administration**



**Agenda for a Meeting of the Development Determination Panel  
to be held on Friday 8 September 2017  
in the Walamai Room Northern Beaches Council, Dee Why**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF PECUNIARY INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Development Determination Panel held 16 August 2017	
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3.2	15 Sturdee Lane, Elvina Bay - Review of Determination of Development Application No. N0054/17/R for replacement of jetty, ramp and pontoon with two stabilizing piles, boatshed and skid ramp .....	21
3.3	48-52 Sydney Road, Manly - Alterations and Additions to the existing building.....	46
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## **2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

### **2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 16 AUGUST 2017**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Development Determination Panel held 16 August 2017 were approved by all Panel Members and have been posted on Council's website.

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### 3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

### ITEM 3.1

## 51/1-5 COLLAROY STREET, COLLAROY - REVIEW OF DETERMINATION OF DEVELOPMENT APPLICATION FOR USE OF PREMISES AS A RECREATION FACILITY AND SIGNAGE

## REPORTING OFFICER

**TRIM FILE REF**

**2017/313124**

## ATTACHMENTS

- 1 [↓ Assessment Report](#)
- 2 [↓ Site Plan](#)

## PURPOSE

To refer the attached application for determination by the discretion of the Executive Manager  
Development Assessment

## RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

That Development Application No. REV2017/0020 for the Review of Determination of Development Application DA2016/0933 for use of premises as a Recreation Facility and Signage on land at Lot 51 SP 58961,51 / 1 - 5 Collaroy Street, COLLAROY be refused for the reasons outlined in the report.

**REVIEW OF DETERMINATION ASSESSMENT REPORT**

<b>Application Number:</b>	REV2017/0020
<b>Responsible Officer:</b>	Kevin Short
<b>Land to be developed (Address):</b>	Lot 51 SP 58961, 51 / 1 - 5 Collaroy Street COLLAROY NSW 2097
<b>Proposed Development:</b>	Review of Determination of Development Application DA2016/0933 for use of premises as a Recreation Facility and Signage
<b>Zoning:</b>	LEP - Land zoned B2 Local Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Development Determination Panel
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Virak Sik Thary Um Phonrith Um
<b>Applicant:</b>	Urbanesque Planning Pty Ltd
<b>Application lodged:</b>	13/06/2017
<b>Application Type:</b>	Local
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	16/06/2017 to 03/07/2017
<b>Advertised:</b>	Not Advertised, in accordance with A.7 of WDCP
<b>Submissions:</b>	5
<b>Recommendation:</b>	Refusal
<b>Estimated Cost of Works:</b>	\$ 95,000.00

**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 all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (upto the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 82A - Environmental Planning and Assessment Act 1979 - Section 82A  
Warringah Local Environmental Plan 2011 - Warringah Local Environmental Plan 2011  
Warringah Local Environmental Plan 2011 - Zone B2 Local Centre  
Warringah Development Control Plan - C2 Traffic, Access and Safety  
Warringah Development Control Plan - C3 Parking Facilities  
Warringah Development Control Plan - D3 Noise

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 51 SP 58961 , 51 / 1 - 5 Collaroy Street COLLAROY NSW 2097
<b>Detailed Site Description:</b>	<p>The subject site consists of one commercial unit (Unit 51) within a multi storey mixed use development located on the northern side of Collaroy Street.</p> <p>The unit is located within the ground level adjacent to the carpark within the development and has an area of 149m<sup>2</sup>.</p> <p>The site is located within the B2 Local Centre zone and accommodates a four storey shop top housing development with parking on the ground floor level adjacent to the shops.</p> <p>Surrounding development consists of other shop top developments, residential flat buildings, backpackers hostel and retail developments.</p>

Map:



## SITE HISTORY

**Development Application DA2016/0933**

Development Application DA2016/0933 was lodged with Council on 7 September 2016.

No pre-lodgement meeting was held in relation to the proposal.

The preliminary assessment of the application resulted in a letter dated 14 November 2016 being sent to the applicant requesting that the application be withdrawn given the non-compliance with WDCP 2011 Clauses, specifically C3 - Parking Facilities and D3 - Noise. A parking and traffic report and acoustic report was not submitted with the application. In response to this letter, a traffic report and acoustic report was submitted to Council.

However, the application was subsequently refused on traffic, parking and noise grounds (refer to Proposed Development in Detail for reasons for refusal).

**Section 82A Review Application REV2017/0020**

Section 82A Review Application REV2017/0020 was lodged with Council on 13 June 2017.

No pre-lodgement meeting was held in relation to the review application.

A review of the application resulted in a letter dated 12 July 2017 being sent to the Applicant requesting that the application be withdrawn as strata owners' corporation consent was not provided with the application and in relation to the non-compliances with WDCP 2011 Clauses C2 - Traffic Access and Safety and C3 - Parking Facilities.

On 19 July 2017 the applicant responded to the withdrawal letter and provided the following supporting documentation to the application;

- *The original development application was approved with the consent of the individual strata lot owner and not the owners' corporation and therefore the review application does not require owners' corporation consent;*
- *Consistent with relevant case law, Owners Strata Plan No 50411 & Ors v Cameron North Sydney Investments Pty, Ltd [2003] NSWCA 5, the application is for a use that is contained entirely within the lot boundaries (including the allocated parking), and therefore the consent of the owners' corporation to the application is not required; and*
- *There is no change to the parking arrangement under the review application and Council's Traffic Engineer does not raise concern with the parking and traffic arrangement as provided under the second referral comments for the original development application.*

As provided throughout this report, the review application has been assessed with consideration of the additional supporting documentation provided with the application and cannot be supported for the reasons of non-compliances with WDCP Clauses C2 - Traffic Access and Safety and C3 - Parking Facilities and the fact that owners' corporation consent is required and has not been provided.

**PROPOSED DEVELOPMENT IN DETAIL**

**Section 82A Review Application**

This Section 82A review application is for the review of the determination of DA2016/0275 for a swim school which was refused for the following reasons;

*1. Pursuant to Section 79C(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 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the objectives of the B2 Local Centre Zone under of the Warringah Local Environmental Plan 2011.*

*3. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C2 Traffic, Access and Safety of the Warringah Development Control Plan 2011.*

*4. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D3 Noise of the Warringah Development Control Plan 2011.*

*5. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the*

As part of the request for a review of DA2016/0933, the applicant has made the following amendments in relation to the equipment capacity and time of operations, relief air opening and management procedures. Specifically, the following amendments have occurred to the original development application;

- Reduction in the the size of the heat pump from 19 kW to 12 kW;
- No operation of heat pump between 10.00pm and 7.00am;
- Glass louvers on the north and northeast face (side of entrance door) of the shop are to be kept closed at all times;
- Glass louvers on the east face (behind the change rooms) are to be left open for natural ventilation;
- Entering and leaving entrance doors is to be managed by staff with the doors remaining open during the day period (7.00am to 6.00pm) and left closed 6.00pm to 8.00pm; and
- Provision of an open cavity to allow free flow of natural ventilation between Shop 5 and outside.

A revised Acoustic Report was also submitted with the review application.

#### **Original Development Application**

The proposal involves the change of use of the existing commercial unit to a Swim School.

The premises have a floor area of approximately 149m<sup>2</sup> and provision is made for an above ground swimming pool, change room facilities, reception / foyer and a store room / plant and equipment room.

The proposed swim school is to operate as follows;

- Hours of operation: 8:00am to 8:00pm Monday to Sunday (7 Days a week)
- Staff: Maximum of 2 staff members
- Typical class sizes: Maximum of 4 children per teacher. Maximum of 2 classes at the same time. Maximum of 6 children in parent / infant classes.
- Length of classes: 30 minutes
- On-site parking: 8 reserved tandem parking spaces
- Signage measuring 4.8m<sup>2</sup> (4.0m x 1.2m) on the front façade of the premises.
- Construction work involved is internal fit out only.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of

the application was taken into account detail provided within Attachment C.

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

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

<b>Section 79C 'Matters for Consideration'</b>	<b>Comments</b>
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.  The proposal is found to be inconsistent with WDCP - C2 Traffic, Access and Safety and C3 Parking Facilities.  Please refer to the WDCP - C2 Traffic, Access and Safety and C3 Parking Facilities sections of the report for further details.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent should the application be approved.  Clauses 54 and 109 of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.  Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This is not a relevant matter.  Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent should the application be approved.  Clause 98 of the EP&A Regulation 2000 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 should the application be approved.
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.

Section 79C 'Matters for Consideration'	Comments
	(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development. Please refer to the WDCP - C2 Traffic, Access and Safety and C3 Parking Facilities sections of the report for further details.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	<p>A total of five (5) submissions were received in relation to the proposed development and are considered under the "Public Exhibition" section of this report. Concerns raised in submissions relate to adverse traffic and parking impacts, noise impacts and the absence of owners' corporation consent.</p> <p>In summary, the concerns raised in submissions in relation to traffic, parking and owners' consent missions are concurred with and it is recommended that these reasons for refusal be maintained.</p> <p>However, the concerns raised in relation to noise have been satisfactorily addressed by the applicant and it is recommended that this reason for refusal is not maintained.</p>
Section 79C (1) (e) – the public interest	<p>Matters have arisen in this assessment that would justify maintaining the reasons for refusal of the original development application in the public interest.</p> <p>Please refer to the WDCP - C2 Traffic, Access and Safety and C3 Parking Facilities sections of the report for further details.</p> <p>Also, as per Clause 50 of the Environmental Planning and Assessment Regulation 2000, and the Development Application Checklist, strata owners consent has not been provided and therefore development consent cannot be granted. This deficiency will form a new reason for refusal.</p> <p>Having regard to the above, the proposal is found not to be in the public interest.</p>

#### **Section 82A of the Environmental Planning and Assessment Act 1979**

In accordance with Section 82A of the Act, an applicant may request Council to review the determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 82A of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application.

The application was determined on 19 April 2017 and the Notice of Determination was issued on 26



April 2017. The review was lodged on 13 June 2017 and is to be considered by the Development Determination Panel on 6 September 2017, which is within 6 months of the date of determination.

Section 82A(4)(c) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

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

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended proposal (being subject of the S82 review) and the nature of the intended land use remains the same. Accordingly, it is concluded that the amended scheme is substantially the same as the original proposal and the proposal satisfies the requirement of Section 82A (4) (c) of the Act.

#### **EXISTING USE RIGHTS**

Existing Use Rights are not applicable to this application.

#### **NOTIFICATION & SUBMISSIONS RECEIVED**

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan.

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

<b>Name:</b>	<b>Address:</b>
Robyn Janice Jurd	3 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Fresh Strata Pty Ltd	3 / 529 Pittwater Road BROOKVALE NSW 2100
Mr Stephen Lydiate	11 / 1125 - 1127 Pittwater Road COLLAROY NSW 2097
Ms Margaret Jean Stanley	11 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Mrs Maureen Wannell	12 / 1125 - 1127 Pittwater Road COLLAROY NSW 2097

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

- Parking, traffic and pedestrian safety
- Noise
- Ventilation
- Owners' corporation consent

The matters raised within the submissions are addressed as follows:

- **Parking, traffic and pedestrian safety**

Comment:

The submissions raise concerns in relation to insufficient parking, the parking arrangements, vehicular and pedestrian movements, timing of the classes (back to back) and the loading and unloading of children within the carpark. The overall concern is that this will create a

significant safety concern, particularly as the parking spaces are tandem and located at the end of the car parking area.

As detailed under the WDCP - C3 Parking Facilities section of the report, the proposal requires a total of eight (8) carparking spaces. The proposal provides eight (8) on-site carparking spaces, comprising four (4) tandem spaces, which complies with the numerical requirements of the control.

However, the original development application was refused on the basis that; *"despite the traffic engineers raising no objections to the proposal, the parking numbers, arrangement (stacked) and the proposed numbers of classes, staff and parking arrangements are inadequate for the proposed use and should be a reason for refusal of the application."*

The review application has not provided any additional supporting information, traffic report or other amendments to the parking arrangements.

The concerns raised in response to the review application are concurred with and warrant the original reasons for the refusal of the application to be maintained.

- **Noise**

Comment:

The submissions raise concerns in relation to adverse noise impacts that would be generated on adjoining and surrounding residential development.

The original development application not supported by Council's Environmental Investigations (Industrial) Officer and was refused on the basis that compliance with the Industrial Noise Policy would not be achieved and that offensive and intrusive noise would impact on sensitive receivers (residential units).

The review application has proposed amendments to the original development application, including limits on equipment capacity, time of operations, relief air opening and management procedures to reduce noise generated from the operation of the swimming school. Full details of the amendments are provided under the Proposed Development in Detail section of the report.

Further, a revised Acoustic Report prepared by West and Associates dated 10 April 2017 accompanied the application.

Council's Environmental Investigations (Industrial) Officer reviewed the acoustic report and raises no concern subject to the implementations of the measures detailed in the report. On this basis, it is considered that the operation of the swimming school can be managed so that it does not generate offensive and intrusive noise on adjoining and surrounding commercial and residential properties.

Should the application be approved, suitable conditions are recommended for the implementation of the measures detailed in the acoustic report, as well as a requirement for a 24 hour hotline phone number to be distributed to all surrounding residential units so that any complaints received in relation to noise are logged and provided to an acoustic engineer for corrective action.

For the reasons given above, the noise impacts from the original proposal have been addressed by the Applicant and so the concerns raised by the residents in relation to noise

are not concurred with and do not warrant the reason for refusal of the original application to be maintained.

- **Ventilation**

Comment:

A submission requests that chlorine odour and the control of humidity be addressed to Council's satisfaction.

As detailed previously in this report, the review application has provided amendments to the original development application in terms of equipment capacity, time of operations and relief air opening of louvers. These amendments will improve internal and external ventilation of chlorine odour, and in this regard, chlorine odour is not expected to generate unacceptable impacts on adjoining and surrounding commercial and residential development.

Therefore, the concerns raised in relation to chlorine odour do not warrant a new reason for refusal of the application.

- **Owners' corporation consent**

Comment:

The concern is that owners' corporation consent is required for the review application and has not been provided.

As discussed in detail under the "Other Planning Matters" section of this report, owners' corporation consent is required as the proposal involves works and use which affects common property.

Therefore, the concern raised in relation to owners' corporation consent is concurred with and warrants a new reason for refusal of the application.

## **MEDIATION**

No requests for mediation have been made in relation to this application.

## **REFERRALS**

<b>Internal Referral Body</b>	<b>Comments</b>
Building Assessment - Fire and Disability upgrades	The Review application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the original conditions recommended for DA2016/0933.
Environmental Investigations (Industrial)	<b>Referral Comments on the original Development Application DA2016/093</b> Review of the acoustic report prepared by West & Ass. PTY LTD job no. 2211/4 dated 18 November 2016 determined that there was non-compliance with the noise generated by equipment and general operation of the property: <ul style="list-style-type: none"> <li>• Pool pump levels - comply;</li> </ul>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• WC Exhaust Fan - no details of fans are provided, so compliance cannot be determined;</li> <li>• Heat pump does not comply at the boundary, it is suggested in the report to relocate to an alternative location, however the alternative location does not comply; and</li> <li>• Noise levels from the premises (general operation) does not comply at the boundary.</li> </ul> <p>It is determined in the report there will be non-compliance with the Industrial Noise Policy, therefore Environmental Health recommends refusal on the basis that offensive and intrusive noise may be created to sensitive receivers.</p> <p><b>Referral Comments on Section 82A Review Application REV2017/0020</b> Environmental health has reviewed that acoustic report prepared by West and Associates titled Jump Swim School, Unit 51,1-5 Collaroy Strett, Acoustic Services. Jon No. 2211/4 dated 10 April 2017.</p> <p>No objections to the acoustic report subject to the implementations of the measures detailed in the above mentioned acoustic report.</p> <p><b>Planners Comment</b> The review application proposes amendments to the original proposal in terms of equipment capacity, time of operations, relief air opening and management procedures to reduce noise generated from the operation of the swimming school. Full details are provided under the Proposed Development in Detail section of the report.</p> <p>As Council's Environmental Investigations (Industrial) Officer has carried out a review and raises no objections to the acoustic report, it is considered that the operation of the swimming school can be appropriately managed so that it does not generate offensive and intrusive noise on adjoining and surrounding commercial and residential properties.</p> <p><b>Additional Recommended Condition: Section 82A Review Application REV2017/0020</b> Having regard to the above and should the application be approved, an additional condition is recommended for a 24 hour hotline phone number manned at all times is to be distributed to all surrounding residential units so that any complaints received in relation to noise are logged and provided to an acoustic engineer for corrective action.</p>
Traffic Engineer	<p><b>Comments on Development Application DA2016/0933</b> The parking report provided by the applicant was reviewed. No objection is raised on the proposal to traffic grounds subject to allocation of the rear space of the stacked modules to staff parking and subject to the Development Assessment Officer being satisfied with the parking provision.</p> <p><b>Planners Comments</b></p>

Internal Referral Body	Comments
	<p>The Statement of Environmental Effects submitted with the S82A application provides that <i>"the original Traffic Report supports the on-site car parking arrangement, and as a result has not been amended"</i>.</p> <p>As such, the S82A Review Application was not required to be referred to Council's Traffic Engineer.</p> <p>Consistent with the planning assessment of the original development application, the tandem parking arrangement is not supported and warrants the original reasons for refusal to be maintained. Further details are provided under the WDCP 2011 - C2 Traffic, Access and Safety and C3 Parking Facilities sections of the report.</p>

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

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

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

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

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

Nil

#### **Warringah Local Environment 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

#### Detailed Assessment

#### **Warringah Local Environment Plan 2011**

##### **WLEP 2011 - Clause 1.2 Aims of Plan**

Relevant to this review application is WLEP 2011 Section (2) (e). The particular aims of this Plan, which are relevant to this application read as follows:

*"(2) The particular aims of this Plan are as follows:*



(e) in relation to non-residential development, to:

- (i) ensure that non-residential development does not have an adverse effect on the amenity of
- (ii) maintain a diversity of employment, services, cultural and recreational facilities"

As detailed in the Submissions, WLEP 2011 - Zone B2 Local Centre and WDCP 2011 - C2 Traffic, Access and Safety and C3 Parking Facilities sections of this report, the proposed traffic and parking arrangements will cause adverse amenity impacts on adjoining residential properties and public places.

Therefore, as per the original application, the proposal is not consistent with the aims of the WLEP 2011 and the reason for refusal of the application on these grounds should be maintained.

#### **Zone B2 Local Centre**

Proposed Use	Permitted or Prohibited
Recreation Facilities (Indoor)	Permitted

The underlying Objectives of the B2 Local Centre zone

- ***To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.***

Comment: The proposal would provide a recreational service to service the needs of people within the local area.

- ***To encourage employment opportunities in accessible locations.***

Comment: Employment opportunities would be provided by the proposed swim school. Also, the premises is accessible from public bus services and a pedestrian footpath from Pittwater Road and vehicle access from Collaroy Street. Also, pedestrian access to the premises is also possible by traversing the driveway on Collaroy Street.

- ***To maximise public transport patronage and encourage walking and cycling.***

Comment: It is expected that access to the premises will be predominantly from private car use given the young age of the students in the swim classes (i.e. infants), the transporting of childrens' equipment (i.e. prams) and multiple trips prior and after swim lessons.

- ***To provide an environment for pedestrians that is safe, comfortable and interesting.***

Comment: The proposal provides eight (8) on-site carparking spaces, comprising four (4) tandem spaces. The operation of the swim school at maximum capacity would be individual thirty (30) minute swim classes between 8am to 8pm seven days a week with a total of eight (8) students and two (2) teachers. This would result in a total of 192 students a day, seven (7) days a week.

Given the tandem parking arrangement, expected private car use and the operation of the swim school at maximum capacity, overflow from the allocated parking area into other areas of the carpark would result causing additional vehicular movements, queuing and congestion, particularly as the parking area is not proposed to be regulated or managed.

Therefore, the additional vehicular movements will create a less than safe environment for pedestrians traversing the driveway on Collaroy Street and within the carpark of the mixed-use development.

- ***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 proposal involves a fit-out within a existing tenancy and signage.

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

Comment: Given the use and the number of possible vehicle movements, pedestrian / vehicle conflict would occur and adversely effect the amenity of adjoining and nearby residential land uses.

These impacts are unacceptable and unreasonable and therefore the proposal fails this consideration. Therefore, it is considered that the original concerns with the objectives of the zone are relevant and should be maintained as a reason for refusal.

#### **Warringah Development Control Plan**

##### Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	No	Yes
D3 Noise	Yes	Yes

##### Detailed Assessment

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

##### **Original Development Application**

Inconsistencies with the requirements of this control formed a reason for refusal of the original development application. Specifically, the original assessment of the development application did not support the tandem parking arrangement, as it would generate additional vehicular movements which in turn would cause vehicle/pedestrian conflict from queuing and congestion, particularly when dropping off and picking up children.

##### **Review S82A Application**

The review application proposes no changes to the on-site carparking arrangements as shown in the original development application. The assessment of this application relies on Council's Traffic Engineer referral comments on the original development application, which did not raise concerns with the parking and traffic arrangement .

Despite Council's Traffic Engineer not raising concerns with the tandem parking arrangements, the tandem parking arrangement is not supported for a use with the levels of intensity and vehicle turnover associated with the proposal and so warrants the reason for refusal on traffic grounds to be maintained.

Assessment against the Objectives of the control is provided as follows;

- ***To minimise traffic hazards.***

Comment: The proposal provides eight (8) on-site carparking spaces, comprising four (4) tandem spaces. As detailed under the WLEP 2011 section of the report, the tandem parking arrangement, expected private car use and the operation of the swim school at maximum capacity, would cause additional vehicular movements, queuing and congestion, particularly as the parking area is not proposed to be regulated or managed.

Individually accessible parking spaces would be more suited for the proposed operation of the swim school and would minimise additional vehicular traffic movements.

The proposal does not satisfy this Objective.

- ***To minimise vehicles queuing on public roads.***

Comment: The proposed tandem parking arrangement and additional vehicular movements will cause congestion in the carpark and therefore potential queuing on Collaroy Street.

The proposal does not satisfy this Objective.

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

Comment: The proposal will use the existing crossing.

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

Comment: The proposed tandem parking arrangement will create vehicular and pedestrian conflict within the carpark, particularly from the dropping off and picking up of children.

The proposal does not satisfy this Objective.

- ***To minimise interference with public transport facilities.***

Comment: Use of the premises will not interfere with public transport facilities.

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

Comment: Given the tandem parking arrangement, expected private car use and the operation of the swim school at maximum capacity, on-street carparking is expected to increase on Collaroy Street and the Collaroy Street Council Carpark located on the southern side of Collaroy Street.

The proposal does not satisfy this Objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant Objectives of the control. Therefore, it is considered that the original concerns with the Objectives of the control are relevant and should be maintained as a reason for refusal.

### **C3 Parking Facilities**



The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Gymnasium (175m <sup>2</sup> GFA)	4.5 spaces/100m <sup>2</sup> GFA	7.8 (8) spaces	8 spaces (tandem)	Nil
<b>Total</b>		<b>8 spaces</b>	<b>8 spaces</b>	<b>Nil</b>

Council's Traffic Engineer has reviewed the tandem arrangement and has not raised any objections subject to a condition which requires that the rear (inner) spaces of each tandem bay is allocated as staff parking.

However, due to concerns in relation to the practicality, convenience and functionality of the carparking arrangements, the provision of parking for the proposal raises concerns which go to the suitability of the site and adequacy of the parking arrangements with respect to practicality, convenience and safety.

### **D3 Noise**

#### **S82A Review Application**

Environmental Investigations Officer has reviewed the S82A application and concludes that based on the assessment in the revised Acoustic Report (and associated recommendations) that noise emissions generated from the use of the premises are not expected to unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors. In this regard, should the application be approved, a suitable condition can be imposed requiring the implementation of the measures detailed in the submitted Acoustic Report prepared by West and Associates dated 10 April 2017.

The revised Acoustic Report provides measures which when implemented would result in the swimming school to be managed so that it does not generate offensive and intrusive noise on adjoining and surrounding commercial and residential properties.

Specifically, the review application includes amendments to the original proposal, including equipment capacity and time of operations, relief air opening and management procedures.

Full details of the amendments are provided under the Proposed Development in Detail section of the report.

#### **Other Matters**

##### **Owners Consent**

The application has been lodged without the correct owners' Consent. The premises is a unit within a strata titled building and therefore in addition to the individual unit owners consent, owners' corporation consent is also required to be provided for the review application to be made.

It is also noted that the full owners' consent should have been lodged with the original development application.

The Applicant contends that consistent with relevant case law, *Owners Strata Plan No 50411 & Ors v Cameron North Sydney Investments Pty, Ltd [2003] NSWCA 5*, the application is for a use that is contained entirely within the lot boundaries (including the allocated parking), and therefore the consent of the owners, corporation to make the application is not required.

However, the matters involved in the proposed development differ to the case law referred to in that the operation of the premises will effect, utilise and interfere with common areas and adjoining premises in the following ways; .

- Signage is proposed on the front facade of the building which is considered common area;
- Ventilation and noise management is reliant on louvers which are required to be opened above and over common areas;
- Potential noise and ventilation impacts (i.e. odour) from the operation of the premises on adjoining unit owners; and
- Traffic, parking and pedestrian impacts on adjoining premises arising from the use of common areas (i.e. parking overflow, pedestrian/vehicle conflict and the like).

Having regard to the above, strata owners' corporation consent is required and insufficient evidence or documentation has been provided to demonstrate that this has been satisfied.

Therefore, the deficiency in owners' consent warrants the imposition of a new reason for refusal of the 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 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

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

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

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

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

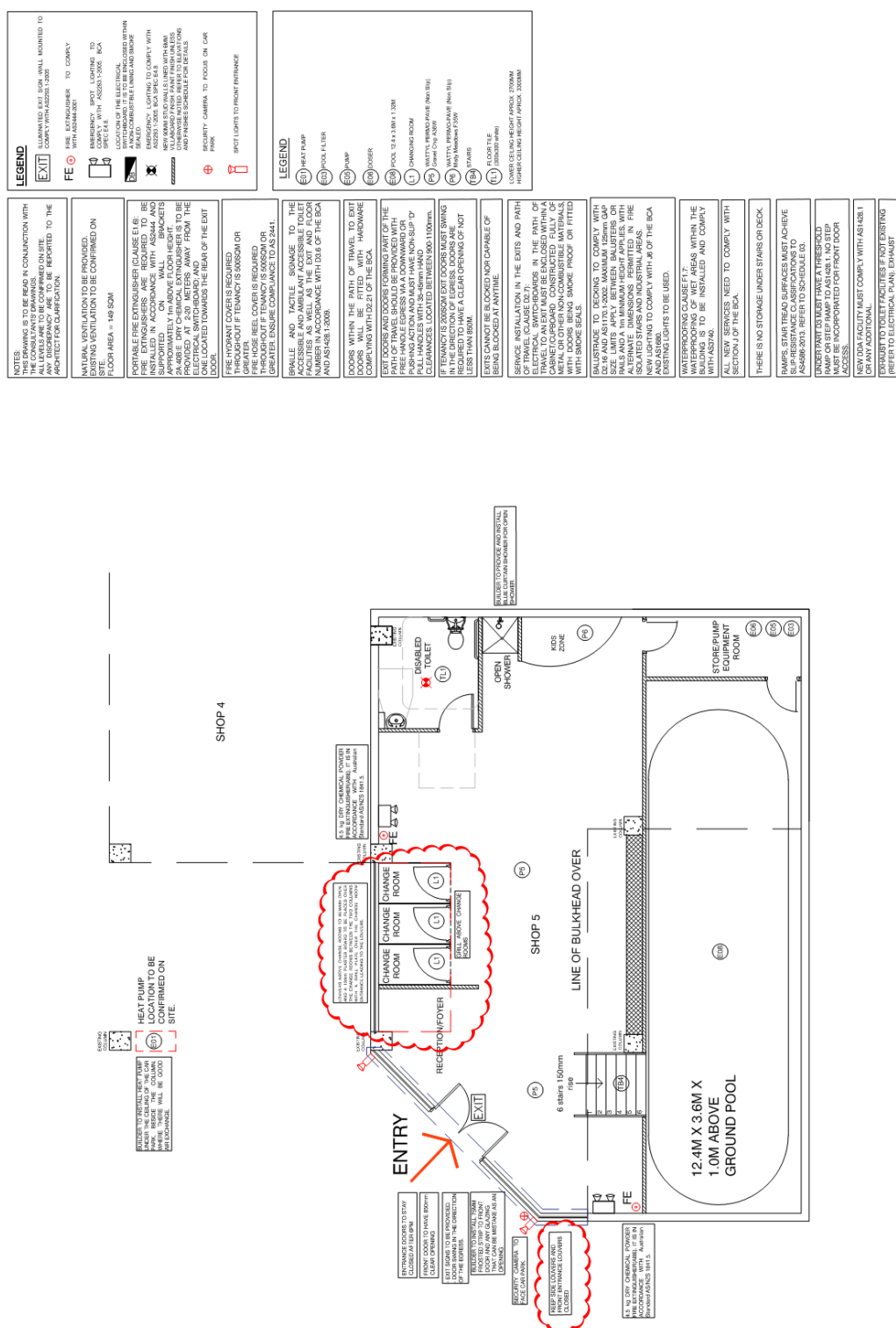
**RECOMMENDATION**

THAT Council, as the consent authority REFUSE Development Consent to Development Application No REV2017/0020 for the Review of Determination of Development Application DA2016/0933 for use of premises as a Recreation Facility and Signage on land at Lot 51 SP 58961,51 / 1 - 5 Collaroy Street, COLLAROY, for the reasons outlined as follows:

1. Pursuant to Section 79C(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 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the objectives of the B2 Local Centre Zone under of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C2 Traffic, Access and Safety of the Warringah Development Control Plan 2011.
4. Pursuant to Clause 49 C (1)(a)(i) of the Environmental Planning and Assessment Regulation 2000 owners' corporation consent has not been provided.
5. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.



NO.	REVISION	DATE	CLIENT:	<p>The builder shall check and verify all dimensions and locations of foundations and omissions to the Architect. Do not scale the drawing. This drawing is for construction purposes only issued by the Architect for construction.</p>	<p>DRAWING TITLE: <b>PROPOSED FIT OUT PLAN</b> SCALE 1:100 ON A3 DATE: STATUS: <b>CONSTRUCTION</b> DRAWN BY: <b>DMITRIOS SOFATZIS</b></p>	<p>PROJECT NO: <b>AJ0099</b> PLOT DATE:</p>	<p>DRAWING No: <b>099/02</b></p>
1	PRELIMINARY	31.08.16	<p>PROJECT NAME: <b>Unit 51/1-5 Collaroy Street, Collaroy, NSW</b></p>				
2	CONSTRUCTION	25.10.16					
3	ACQU REG	07.04.17					
4							
5							



**ITEM 3.2**

**15 STURDEE LANE, ELVINA BAY - REVIEW OF  
DETERMINATION OF DEVELOPMENT APPLICATION NO.  
N0054/17/R FOR REPLACEMENT OF JETTY, RAMP AND  
PONTOON WITH TWO STABILIZING PILES, BOATSHED AND  
SKID RAMP**

**REPORTING OFFICER**

**TRIM FILE REF** 2017/317534

**ATTACHMENTS**

- 1 [↓](#) Assessment Report
- 2 [↓](#) Site and Elevation Plans

**PURPOSE**

To refer the attached application for determination by the discretion of the Executive Manager Development Assessment

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**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

That Review of Determination of Development Application No. N0054/17/R for replacement of jetty, ramp and pontoon with two stabilizing piles, boatshed and skid ramp be approved subject to the conditions outlined in the report.

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**SUBJECT: N0054/17/R – Section 82A Reconsideration of Determination - Replacement of jetty, ramp and pontoon with two stabilizing piles, boatshed, decking and skid ramp at 15 STURDEE LANE, ELVINA BAY NSW 2105**

**Determination Level:** **Development Determination Panel**

## SUMMARY OF RECOMMENDATION:

## CONSENT WITH CONDITIONS

**REPORT PREPARED BY:** Hugh Halliwell

**APPLICATION SUBMITTED ON:** 23 May 2017

**APPLICATION SUBMITTED BY:** MARK NICHOLLS  
C/- SHEPHEN CROSBY AND ASSOCIATES  
PTY LTD.  
PO BOX 204  
CHURCH POINT,  
NSW 2105

**OWNER(S):** MARK BRIAN NICHOLLS  
MADELEINE NICHOLLS





## INTRODUCTION

This assessment has been undertaken following the request for a review of the determination made in respect of Development Application N0054/17. This request has been made pursuant to s.82A of the *Environmental Planning and Assessment Act 1979*. N0054/17 sought consent for the replacement of a jetty, ramp and pontoon with two stabilizing piles, boatshed, decking and skid ramp at 15 Sturdee Lane, Elvina Bay and was refused by Council on 24 March 2017. N0054/17 was refused for the following reasons;

1. The submitted Estuarine Risk Assessment report has been rejected for the following reasons:
  - It does not identify all of or quantify adequately the coastal risks;
  - It does not document adequately recommendations to manage the coastal risks;
  - It does not provide design loads for wave uplift on the boatshed floors and jetty deck structures;
  - It does not clearly define the freeboard for elective outlets, etc;
  - It does not define the size of the gaps required in the boatsheds floor to allow for the passage of wave inundation and subsequent drainage; and
  - It has not been prepared by a Chartered Professional Engineer whose core competencies include coastal engineering.

## SITE DETAILS

The site is commonly known as 15 Sturdee Lane, Elvina Bay and has a legal description of Lot 8 in Deposited Plan 8013. The site is rectangular in shape and is accessed by boat via the Pittwater Waterway to the south or by foot via Sturdee Lane to the north. The site rises at a grade in excess of 45° from a levelled area behind a stone seawall forward of the Mean High Water Mark. The site contains an existing jetty with ramp and pontoon, and an existing seawall. The site currently contains not boatshed.

## PROPOSAL IN DETAIL

The application seeks consent for the construction of a new boatshed (FFL 1.6m AHD) and deck, jetty, ramp, pontoon and skid ramp. All works will be located below the mean high water mark (MHWM).

## STATUTORY AND POLICY CONSIDERATIONS

The site is zoned E3 Environmental Management and W1 Natural Waterways under Pittwater Local Environmental Plan 2014. Pursuant to the land use table in Part 2 of this instrument, the proposed structures are prohibited within the W1 Natural Waterways zone. However, pursuant to Schedule 1 Additional Permitted Uses of PLEP 2014, development for the purposes of boat sheds, jetties or water recreation structures are permitted with development consent.

The following relevant state, regional and local policies and instruments apply:

- Environmental Planning and Assessment Act, 1979 (the Act);

- Environmental Planning and Assessment Regulation 2000 (the Regulation);
- State Environmental Planning Policy No 71 - Coastal Protection (SEPP 71);
- Draft State Environmental Planning Policy (Coastal Management Policy);
- Pittwater Local Environmental Plan 2014 (PLEP 2014);
  - Acid Sulphate Soils Map - Area 5
  - Biodiversity Map
  - Foreshore Building Line Map
  - Geotechnical Hazard Map - H1
  - Height of Buildings Map – B ~ 4.0m
  - Additional Permitted Uses Map - Area 23
- Pittwater 21 Development Control Plan (P21 DCP);
  - Upper Western Foreshores Locality
  - Bushfire prone property
  - Geotechnical Risk Management Policy for Pittwater
  - Estuarine Risk Management Policy for Development in Pittwater - Wave Action and Tidal Inundation
  - Landscaped Area Map 1
  - Land Containing or Adjoining Pittwater Spotted Gum Forest
  - Land Containing areas of Saltmarsh Endangered Ecological Community
  - Land adjacent estuarine wetlands
  - Land within 40m of a river, stream or foreshore

**Variation to development standards:**

This application seeks to vary a development standard.

See Clause 4.3 Height of buildings for discussion on building height.



## BACKGROUND

### **3 February 2017**

Development Application N0054/17 was lodged with Council and referred to Council's Natural Environment Officer, Development Engineer and NSW Department of Planning and Environment (SEPP71) for comments and/or recommendations.

### **24 March 2017**

Development Application N0054/17 was refused by the delegated authority of Manager – Development Assessment.

### **23 May 2017**

Section 82A Review of Determination application was lodged with Council and subsequently referred to Council's Natural Environment Officer, Development Engineer and NSW Department of Planning and Environment (SEPP71) for comments and/or recommendations.

## NOTIFICATION

The subject application, N0054/17/R, was notified from 30 May 2017 to 13 June 2017 to adjoining property owners in accordance with Council's notification policy. During this time, zero (0) submissions were received from the notified property owners.

The site inspection on the 5 June 2017 confirmed the placement of the notification sign.

## ISSUES

- Clause 4.3 of PLEP 2014 - Height of buildings;
- Clause 4.6 Exceptions to development standards;
- SEPP No 71 - Coastal Protection;
- Clause B3.9 Estuarine Hazard of P21 DCP – Business, Light Industrial and Other Development;
- Clause D15.13 of P21 DCP - Lateral limits to development seaward of mean high water mark; and
- Clause D15.15 of P21 DCP - Waterfront development.

## COMPLIANCE TABLE

- T - Can the proposal satisfy the technical requirements of the control?
- O - Can the proposal achieve the control outcomes?
- N - Is the control free from objection?

The following table was produced as part of the assessment report associated with Development Application N0054/17. Comments in **bold text** relate to the changes proposed as part of the s82A Review of Determination.

Control	Standard	Proposal	T	O	N
<b>Pittwater Local Environmental Plan 2014</b>					
1.9A Suspension of covenants, agreements and instruments			Y	Y	Y
Zone E3 Environmental Management			Y	Y	Y
4.3 Height of buildings		<b>Building height variation.</b> <b>See discussion below.</b>	N	Y	Y
4.6 Exceptions to development standards		<b>See discussion below.</b>	Y	Y	Y
5.5 Development within the coastal zone			Y	Y	Y
5.7 Development below mean high water mark		Refer B3.9.	N	N	Y
5.10 Heritage conservation			Y	Y	Y
7.1 Acid sulfate soils			Y	Y	Y
7.2 Earthworks			Y	Y	Y
7.6 Biodiversity protection			Y	Y	Y
7.7 Geotechnical hazards		The proposal is acceptable provided the applicant submits a Geotechnical hazard form 1 prior to the issue of any Construction certificate for the subject site.	Y	Y	Y
7.8 Limited development on foreshore area		See discussion below.	N	N	Y
7.10 Essential services			Y	Y	Y
<b>Pittwater 21 Development Control Plan 2014</b>					
3.1 Submission of a Development Application and payment of appropriate fee			Y	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	Y
3.3 Submission of supporting		Add info provided - Aquatic	N	Y	Y

Control	Standard	Proposal	T	O	N
documentation - Site Plan / Survey Plan / Development Drawings		ecology report & Estuarine Risk management report 3/3/17. Geotechnical report not provided, will include a condition for Form 1 to be provided with CC.			
3.4 Notification			Y	Y	Y
3.5 Building Code of Australia			Y	Y	Y
3.6 State Environment Planning Policies (SEPPs) and Sydney Regional Environmental Policies (SREPs)			Y	Y	Y
A1.7 Considerations before consent is granted			Y	Y	Y
A4.8 Lower Western Foreshores and Scotland Island Locality			Y	Y	Y
B1.3 Heritage Conservation - General			Y	Y	Y
B1.4 Aboriginal Heritage Significance			Y	Y	Y
B3.1 Landslip Hazard		Geotechnical hazard assessment report and form 1 required prior to the issue of CC.	Y	Y	Y
B3.2 Bushfire Hazard			Y	Y	Y
B3.7 Estuarine Hazard - Low density residential		Non-compliant, see below.	N	N	Y
B3.9 Estuarine Hazard of – Business, Light Industrial and Other Development		<b>See discussion below for comments from Council's engineer.</b>	Y	Y	Y
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community			Y	Y	Y
B4.16 Seagrass Conservation		Comment in B4.19	Y	Y	Y
B4.19 Estuarine Habitat			Y	Y	Y
B4.20 Protection of Estuarine Water Quality			Y	Y	Y
B5.11 Stormwater Discharge into Waterways and Coastal Areas					
B5.13 Development on Waterfront Land		Approval from RMS and Department of Lands provided.	Y	Y	Y
B5.14 Stormwater Drainage			-	-	-

<b>Control</b>	<b>Standard</b>	<b>Proposal</b>	<b>T</b>	<b>O</b>	<b>N</b>
Easements (Public Stormwater Drainage System)					
B8.1 Construction and Demolition - Excavation and Landfill			Y	Y	Y
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.3 Construction and Demolition - Waste Minimisation			Y	Y	Y
B8.4 Construction and Demolition - Site Fencing and Security			Y	Y	Y
C1.1 Landscaping			Y	Y	Y
C1.2 Safety and Security			Y	Y	Y
C1.3 View Sharing			Y	Y	Y
C1.4 Solar Access			Y	Y	Y
C1.5 Visual Privacy			Y	Y	Y
C1.6 Acoustic Privacy			Y	Y	Y
C1.7 Private Open Space			Y	Y	Y
C1.13 Pollution Control			Y	Y	Y
C1.14 Separately Accessible Structures			Y	Y	Y
D8.1 Character as viewed from a public place			Y	Y	Y
D8.2 Scenic protection - General			Y	Y	Y
D8.3 Building colours and materials			Y	Y	Y
D8.5 Front building line			Y	Y	Y
D8.6 Side and rear building line			Y	Y	Y
D8.9 Landscaped Area			Y	Y	Y
D8.11 Construction, Retaining walls, terracing and undercroft areas			Y	Y	Y
D8.15 Site disturbance			Y	Y	Y
D15.11 Waterfront lighting			Y	Y	Y
D15.12 Development seaward of mean high water mark		Public access will be retained via the 'access deck' around the boatshed.	Y	Y	Y

Control	Standard	Proposal	T	O	N
D15.13 Lateral limits to development seaward of mean high water mark		Proposal remains non-compliant. See discussion below.	N	Y	Y
D15.14 Minimum frontage for waterfront development		Water frontage is 15.3m.	Y	Y	Y
D15.15 Waterfront development			Y	Y	Y
D15.18 Seawalls			Y	Y	Y
D15.19 Dredging			Y	Y	Y
<b>State Environmental Planning Policies and other</b>					
SEPP No 71 - Coastal Protection		See discussion below.	Y	Y	Y
EPA Act 1979 No 203 section 147 Disclosure of political donations and gifts			Y	Y	Y

## DISCUSSION OF ISSUES

### Clause 4.3 Height of buildings of PLEP 2014; and Clause 4.6 Exceptions to Development Standards

The proposed boatshed is located over the Pittwater Waterway. In the W1 Natural Waterway zone and in accordance with the Height of Buildings Map in PLEP 2014, the maximum permitted building height is 4m when measured from the astronomical high tide (1.17m AHD). The proposed boatshed is to be 4.93m when measured from 1.17m AHD, resulting in a non-compliance of 0.93m or 23.25%.

The Applicant was requested to submit a Clause 4.6 Exceptions to Development Standards statement requesting a variation to the maximum building height.

The objectives of this clause are as follows:

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

The Applicant's written request has sought variation to Clause 4.3 on the basis of two points:

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

The Applicant has sought flexibility in applying clause 4.3 to the subject development, being a boatshed by arguing compliance with the relevant P21 DCP clauses. It is argued by the Applicant that the offending boatshed will meet all applicable P21 DCP clauses, including D15.15 Waterfront Development.

It is considered that the Applicant has sufficiently demonstrated and addressed the

matters required under subclause (3) above. Compliance is considered to be both unnecessary and unreasonable in this case. Requesting compliance with clause 4.3 would require substantial lowering of the boatshed that would likely require a flat roof design that would not be in keeping with the character of the Waterways Locality and contravene the boatshed design guidelines under clause D15.15 of P21 DCP. It is acknowledged that to provide a boatshed entirely on freehold land, in this case, would be impracticable and result in substantial excavation, including tree loss. It is therefore considered that there are sufficient environmental planning grounds to justify contravening clause 4.3.

Clause 4.6 stipulates the following:

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

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

The matters required to be demonstrated by subclause (3) have been sufficiently addressed by the Applicant.

The proposed boatshed is found to be consistent with the objectives of clause 4.3. Despite its height and scale, the boatshed will remain consistent with the desired character of the locality. The boatshed will continue to allow for public access adjoining the foreshore, or pedestrian access along the foreshore. The boatshed will also allow for the retention of existing vegetation that will minimise the additional bulk and scale. The boatshed will remain compatible with nearby boatsheds in both bulk and scale with similar height and gable designs.

As the boatshed is located entirely below MHWL, the boatshed will not result in any unreasonable level of impact on neighbouring properties, including any unreasonable impact to view sharing. The boatshed has responded sensitively to the natural topography by locating the structure below MHWL and not on freehold land which would result in substantial excavation. By not excavating into the slope, any adverse impact to the natural environment will be minimal. The boatshed is not located within the vicinity of a heritage conservation area or a heritage item.

The proposal is considered to satisfactorily achieve the objectives of the W1 Natural Waterways zone. The structures will not have a detrimental impact upon the ecological and scenic values of the natural waterway, nor will it adversely impact upon the natural environment or the navigation of the waterway.

This assessment concludes that the submitted clause 4.6 statement is well-founded and should be supported.

### **SEPP No 71 - Coastal Protection**

Correspondence from Department of Planning and Environment (DoPE) has been received prior to this recommendation. The correspondence concludes that the DoPE do not need to be involved in the consideration of the matter and that

Council can now proceed to determine the proposal having regard to the matters listed in Clause 8 of the SEPP. It is considered that the proposal is able to satisfactorily meet the matters for consideration under Clause 8 of SEPP 71, including the aims of the policy listed under Clause 2.

### **Clause B3.9 Estuarine Hazard of P21 DCP – Business, Light Industrial and Other Development**

Council's Development Engineer has provided the following comments:

*Subject to the specific requirements of the Department of Primary Industries and the Crown Lands Division, the following comments regarding the abovementioned development application are offered.*

*The property at 15 Sturdee Lane, Elvina Bay, has been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.*

*Based upon the Detail and Level Survey prepared by SDG Land Development Solutions (dated 24/02/2016) submitted in support of application N0054/17, the foreshore edge treatment type appears to be a vertical seawall with a crest height at or about RL 1.3m AHD. As such, in accordance with Council's Estuarine Hazard Mapping for Pittwater (2015), an **estuarine planning level (EPL) of RL 2.67m AHD** applies at the subject site. As there is no landward setback from the proposed foreshore edge treatment, no reduction factor (RF) to the EPL will apply.*

*As a significant portion of the proposed boatshed development is seaward of MHW and the foreshore edge treatment, Council will rely upon the advice contained in the Cardno (NSW/ACT) Pty Ltd Coastal Engineering Report 59917126/L001, dated 5 May 2017, as the basis for ensuring that the coastal risk management aspects of the proposal have been adequately addressed to achieve an acceptable risk level for the life of the structure, taken to be 100 years unless otherwise specified and justified. As the boatshed is also proposed to be constructed below the EPL seaward of the foreshore edge treatment and will be subject to wave impact forces.*

### **Clause D15.13 of P21 DCP - Lateral limits to development seaward of mean high water mark**

The proposed access deck on the eastern side of the boatshed will be setback 1.4m from the lateral limit line and therefore does not comply with the 2m setback required under D15.13. As the non-compliance occurs for the access deck only and not alongside the skid ramp or jetty, combined with the jetty at 13 Sturdee Lane being 6m from the lateral limit line, it is considered that sufficient access to the waterway will be maintained for the neighbour. The non-compliant structure will not create an unreasonable encroachment of waterfront development in front of adjoining properties. A variation to the control is supported.

### **Clause D15.15 of P21 DCP - Waterfront development**

The proposed pontoon is 3.6m x 2.4m and complies with the 6m x 2.4m allowable



dimensions under D15.15.

The proposed boatshed is 4m x 6m x 4.5m high and complies with the control.

The proposed jetty complies with the height limit of 2.67m AHD.

The proposed piles comply with the maximum height (2.67m AHD) stipulated under D15.15.

The control specifies that slipways are generally not favoured. However skid ramps do exist on neighbouring properties in the surrounding area. As the skid ramp will be constructed in hardwood and public access will be maintained, it is considered that the development is consistent and sympathetic with the surrounding area and will remain similar to existing developments in the area. The slipway is found to be sympathetic to marine vegetation. The proposed structures are able to satisfy all outcomes of the control. A variation to the control is supported.

### CONSIDERATION OF S.82A

The applicant has made an application for review within the timeframe permitted under s.97 of the Act. Council has considered the request for a review in accordance with the requirements of s.82A of the Act, as follows;

- a. *it has notified the request for review in accordance with:*
  - (i) *the regulations, if the regulations so require, or*
  - (ii) *a development control plan, if the council has made a development control plan that requires the notification or advertising of requests for the review of its determinations,*

The s.82A review application was notified in the same manner as the original application in accordance with the regulations and Council's Notification Policy.

- b. *it has considered any submissions made concerning the request for review within any period prescribed by the regulations or provided by the development control plan, as the case may be, and*

The amended proposal was notified to adjoining property owners in accordance with Council's notification policy. Zero (0) submissions were received in regards to the amended proposal.

- c. *in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same development as the development described in the original application.*

It appears that the applicant has made minor amendments to the proposal documentation, including the estuarine assessment report, in an attempt to address the reasons for refusal issued by Council. Whilst the proposal has been altered in a way to achieve a greater level of consistency with Pittwater 21 DCP, the changes were not so different as to result in a development that would not be seen to be substantially the same as the development described in the original application.



The proposed development is considered to meet the provisions of s.82A of the Act.

## **CONCLUSION**

The Development Application has been assessed in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, Pittwater Local Environmental Plan, Pittwater 21 Development Control Plan and other relevant policies as listed at item 3.0.

The applicant has provided sufficient information in order to determine the proposed development and subject to conditions of consent, the construction of a new boat shed, jetty, pontoon and skid ramp and access deck is considered to be permissible pursuant to PLEP and consistent with the outcomes and controls of P21 DCP. The proposed development is not considered to result in any unreasonable impacts upon the surrounding environment and is consistent with existing land uses within the immediate vicinity.

The proposal has been found to be consistent with the technical requirements and objectives of P21 DCP, including B3.9 Estuarine Hazard, as the submitted updated Flood Risk Assessment adequately quantifies all the risks associated with this type of development and has been prepared by a Chartered Coastal Engineer. As a result of these considerations the proposal is recommended for approval.

Through the process of the subject review, the applicant has demonstrated that the updated estuarine assessment report is sufficient. Accordingly, the application is recommended for approval.

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## **RECOMMENDATION OF DEVELOPMENT OFFICER/PLANNER**

That Council as the consent authority pursuant to Section 82A of the Environmental Planning and Assessment Act 1979 review the determination of Development Application N0054/17 for the jetty, pontoon, boatshed, skid ramp and access deck at units 15 Sturdee Lane, Elvina Bay and grant development consent, subject to the conditions in the draft determination attached.

Report prepared by

Hugh Halliwell  
**PLANNER**

**CONSENT NO: N0054/17/R ENVIRONMENTAL PLANNING & ASSESSMENT  
ACT, 1979 (AS AMENDED) NOTICE TO APPLICANT OF DETERMINATION OF A  
DEVELOPMENT APPLICATION**

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Applicant's Name and Address:

MARK NICHOLLS  
C/- STEPHEN CROSBY AND ASSOC. PTY LTD.  
PO BOX 204  
CHURCH POINT NSW 2105

Being the applicant in respect of Development Application No N0054/17/R

Pursuant to section 80(1) of the Act, notice is hereby given of the determination by Northern Beaches Council, as the consent authority, of Development Application No **N0054/17/R** for:

**Section 82A Review of Determination of refused replacement of jetty, ramp and pontoon with two stabilizing piles, boatshed, decking and skid ramp.**

**At: 15 STURDEE LANE, ELVINA BAY NSW 2105 (Lot 8 DP 8013)**

**Decision:**

The Development Application has been determined by the granting of consent based on information provided by the applicant in support of the application, including the Statement of Environmental Effects, and in accordance with

- Architectural drawings:
  - DA01, prepared by Stephen Crosby & Associates Pty. Ltd, dated April 2016;
  - DA02, prepared by Stephen Crosby & Associates Pty. Ltd, dated April 2016;
  - DA03, prepared by Stephen Crosby & Associates Pty. Ltd, dated August 2016;
- Coastal Engineering Report, ref. 59917126/L001, prepared by Cardno, dated 5 May 2016;
- Arboricultural Assessment, 15 Sturdee Lane, Elvina Bay, prepared by Julia Stanton, dated December/January 2016/17;
- Bushfire Risk Assessment, Ref No. 2026 – DA01, prepared by Planning for Bushfire Protection, dated April 2016.

as amended in red (shown clouded) or as modified by any conditions of this consent.

The reason for the imposition of the attached conditions is to ensure that the development consented to is carried out in such a manner as to achieve the objectives of the Environmental Planning and Assessment Act 1979 (as amended), pursuant to section 5(a) of the Act, having regard to the relevant matters for consideration contained in section 79C of the Act and the Environmental Planning Instruments applying to the land, as well as section 80A of the Act which authorises the imposing of the consent conditions.

Endorsement of date of consent \_\_\_\_\_

### Conditions of Approval

This consent is not an approval to commence building work. The works associated with this consent can only commence following the issue of the Construction Certificate.

Note: Persons having the benefit of development consent may appoint either a council or an accredited certifier as the principal certifying authority for the development or for the purpose of issuing certificates under Part 4A of the Environmental Planning and Assessment Act. When considering engaging an accredited certifier a person should contact the relevant accreditation body to ensure that the person is appropriately certified and authorised to act in respect of the development.

#### A. Prescribed Conditions:

1. All works are to be carried out in accordance with the requirements of the Building Code of Australia.
2. A sign must be erected in a prominent position onsite only showing:
  - a) the name, address and telephone number of the Principal Certifying Authority for the work, and
  - b) the name of the principal contractor or the person responsible for the works and a telephone number on which that person may be contacted outside working hours, and
  - c) that unauthorised entry to the work site is prohibited.

The sign must 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.

3. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - a) in the case of work for which a principal contractor is required to be appointed:
    - i. The name and licence number of the principal contractor, and
    - ii. The name of the insurer by which the work is insured under Part 6 of that Act.
  - b) in the case of work to be done by an owner-builder:
    - i. The name of the owner-builder, and
    - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
  - c) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under a or b above becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which

the work relates (not being the Council) has given the Council written notice of the updated information

**B. Matters to be incorporated into the development and maintained over the life of the development:**

1. The proposed boatshed is to be designed to withstand the likely forces of wave action estimated by the Coastal Engineering Report 59917126/L001, dated 5 May 2017, prepared by Cardno (NSW/ACT) Pty Ltd.
2. The development is to comply with all the requirements and recommendations of the Coastal Engineering Report 59917126/L001, dated 5 May 2017, prepared by Cardno (NSW/ACT) Pty Ltd.
3. The applicable Estuarine Planning Level (EPL) adopted by Council is RL 2.67m AHD.
4. All structural elements below the Estuarine Planning level shall be of flood compatible materials.
5. All structures must be designed and constructed to achieve a low risk of damage and instability due to estuarine hazard.
6. All electrical equipment, wiring, fuel lines or any service pipes and connections must be waterproofed to the Estuarine Planning level.
7. The storage of toxic or potentially polluting goods, materials or other products which may be hazardous or pollute floodwater is not permitted below the Flood Planning level
8. All boatshed windows and glazed panels in doors that are located seaward of the foreshore edge treatment shall utilise laminated safety glass and have a sill height at or above the EPL.
9. At no time shall the boatshed be utilised or converted to provide for residential habitation. The boatshed must not be used for any other purpose than the storage of small boats, light watercraft and boating and marine equipment. The incorporation of any internal kitchen facilities, habitable rooms, shower or toilet facilities is not permitted.
10. Interior power supply fittings must be located at least 1.0m above the finished floor level of the boatshed. Exterior electrical fittings should be located at least 1.5m above the floor level to avoid contact with splashing waves.
11. As part of an integrated on-site stormwater management system, stormwater overflow from the rainwater tank is to be discharged into the adjacent coastal area with erosion minimisation facilities installed.
12. Prior to the completion of works, all declared noxious weeds are to be removed/controlled in accordance with the Noxious Weeds Act 1993. Environmental weeds are to be removed and controlled. Refer to Council website [http://www.pittwater.nsw.gov.au/environment/noxious\\_weeds](http://www.pittwater.nsw.gov.au/environment/noxious_weeds) for noxious/environmental weed lists.

13. No environmental weeds are to be planted on the site. Refer to Council website [www.pittwater.nsw.gov.au/environment/noxious\\_weeds](http://www.pittwater.nsw.gov.au/environment/noxious_weeds) for environmental weed lists.
14. Domestic pet animals are to be kept from entering wildlife habitat areas at all times. Dogs and cats are to be kept in an enclosed area or on a leash such that they cannot enter areas of bushland or foreshore, unrestrained, on the site or on surrounding properties or reserves. Ferrets and rabbits are to be kept in a locked hutch/run at all times.
15. Any vegetation planted onsite outside approved landscape zones is to be consistent with:
  - a) Species listed in the Ecological Sustainability Plan or Bushland Management Plan (if applicable)
  - b) Species listed from the Endangered Ecological Community
  - c) Locally native species growing onsite and/or selected from the list pertaining to the vegetation community growing in the locality as per the vegetation mapping and Native Plants for Your Garden available on the Council website  
[http://www.pittwater.nsw.gov.au/environment/species\\_lists](http://www.pittwater.nsw.gov.au/environment/species_lists)
16. No building materials or other materials are to be placed on Bushland vegetation. Sediment is not to leave the site or enter areas of Bushland vegetation, and the appropriate sediment fencing is to be installed.
17. There shall be no damage to intertidal habitats including rocky shores, seagrass beds, salt marshes or mangroves.
18. The landowner must comply with all aspects of the approved Aquatic Ecology Survey report (Marine Pollution Research, 4/8/16) over the life of the development.
19. No building materials or other materials are to be placed on foreshore / Seagrass or other native vegetation. Sediment is not to leave the site or enter areas of Seagrass or its habitat.
20. There is to be no net loss of sea grass.
21. If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

**C. Matters to be satisfied prior to the issue of the Construction Certificate:**

Note: All outstanding matters referred to in this section are to be submitted to the accredited certifier together. Incomplete Construction Certificate applications / details cannot be accepted.

1. Submission of construction plans and specifications and documentation which are consistent with the approved Development Consent plans, the

requirements of Building Code of Australia and satisfy all conditions shown in Part B above are to be submitted to the Principal Certifying Authority.

2. The person having the benefit of this consent is required to notify the Principal Certifying Authority to ensure that the following critical stage inspections are undertaken, as required under clause 162A(4) of the Environmental Planning and Assessment Regulation 2000:
  - a) after excavation for, and prior to the placement of, any footings, and
  - b) prior to pouring any in-situ reinforced concrete building element, and
  - c) prior to covering of the framework for any floor, wall, roof or other building element, and
  - d) prior to covering waterproofing in any wet areas, and
  - e) prior to covering any stormwater drainage connections, and
  - f) after building work has been completed and prior to any occupation certificate being issued in relation to the building.

To allow a Principal Certifying Authority to carry out critical stage inspections, at least 48 hours notice must be given before building work is commenced and prior to further work being undertaken.

3. Construction works approved by this consent must not commence until:
  - a) Construction Certificate has been issued by a Principal Certifying Authority
  - b) a Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment, and
  - c) at least 2 days notice, in writing has been given to Council of the intention to commence work.
4. In accordance with section 34 of the Building and Construction Industry Long Service Payments Act 1986, the applicant must pay a long service levy at the prescribed rate of 0.0035 of the total cost of the work to either the Long Service Payment Corporation or Council for any work costing \$25,000 or more.
5. Structural Engineering details relating to the development are to be submitted to the Accredited Certifier or Council prior to release of the Construction Certificate. Each plan/sheet is to be signed by a qualified practising Structural Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a corporate member and has appropriate experience and competence in the related field.
6. Structural Engineering details and specifications for the boatshed and associated works, which address the likely forces from wave action as outlined in the Coastal Engineering Report, shall be prepared by, and each plan/sheet signed by, a registered professional civil or structural engineer with chartered professional status (CP Eng) and submitted to the Principal Certifying Authority prior to issue of the Construction Certificate.
7. A certificate is also to be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate, that has been prepared and signed by a civil or structural engineer who is a registered professional engineer with chartered professional status (CP Eng), certifying that the boatshed will withstand the likely forces from wave action as outlined in the Coastal



Engineering Report 59917126/L001, dated 5 May 2017, prepared by Cardno (NSW/ACT) Pty Ltd.

8. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.
9. Drainage plans including specification and details showing the site stormwater management are to be submitted to the Principal Certifying Authority. The drainage plans must be designed and implemented in accordance with the requirements of section 3.1.2 Drainage of the Building Code of Australia Housing Provision and AS/NZS 3500.3.2 - Stormwater Drainage
10. Civil engineering details of the proposed excavation/landfill are to be submitted to the Accredited Certifier or Council with the Construction Certificate application. Each plan/sheet is to be signed by a qualified practising Civil Engineer who has corporate membership of the Institution of Engineers Australia (M.I.E) or who is eligible to become a corporate member and has appropriate experience and competence in the related field.

**D. Matters to be satisfied prior to the commencement of works and maintained during the works:**

Note: It is an offence to commence works prior to issue of a Construction Certificate.

1. The hours of construction are restricted to between the hours of 7.00am and 5.00pm Monday - Friday and 7.00am to 1.00pm on Saturdays. No works are to be carried out on Sundays or Public Holidays. Internal building work may be carried out at any time outside these hours, subject to noise emissions from the building or works not being audible at any adjoining boundary.

Note: This condition does not apply in relation to Crown building work that is certified, in accordance with Section 116G of the Act, to comply with the technical provisions of the States building laws.

2. A stamped copy of the approved plans is to be kept on the site at all times, during construction.
3. Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must give the owner of the adjoining property at least seven (7) days written notice of their intention to excavate below the level of the base of the footing and furnish the adjoining property owner with particulars of the proposed work.
4. The following measures shall be implemented in the sequence given below, to minimise soil erosion:
  - a) Approved runoff and erosion controls shall be installed before site vegetation is cleared (other than that associated with the construction of the controls). These shall be as shown on an ESCP approved by council.

- b) Topsoil shall be stripped only from approved areas and stockpiled for re-use during site rehabilitation and landscaping.
  - c) Stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage line or easement, waters, footpath, kerb or road surface and shall have measures in place to prevent the movement of such materials onto the areas mentioned. All stockpiled materials are to be retained within the property boundaries.
  - d) Uncontaminated runoff shall be intercepted up-site and diverted around all disturbed areas and other areas likely to be disturbed.
  - e) Diversion works shall be adequately stabilised.
  - f) Runoff detention and sediment interception measures shall be applied to the land. These measures will reduce flow velocities and prevent topsoil, sand, aggregate, or other sediment escaping from the site or entering any downstream drainage easements or waters.
  - g) The capacity and effectiveness of runoff and erosion control measures shall be maintained at all times to conform to the specifications and standards quoted and to any conditions of approval of those measures.
  - h) Measures shall be applied, to the satisfaction of council, to prevent site vehicles tracking sediment and other pollutants onto any sealed roads serving the development.
  - i) Measures required in permits issued under the Rivers and Foreshores Improvement Act shall be implemented. This Act requires that people obtain approval for any proposed excavation or fill in or within 40 metres of a watercourse. Permits should be sought from the Department of Natural Resources.
11. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
12. Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.
13. Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.
14. The construction of the development and preparation of the site, including operation of vehicles, must be conducted so as to avoid unreasonable noise or vibration and not cause interference to adjoining or nearby occupations
15. Personnel with appropriate training, or demonstrated knowledge and experience in erosion and sediment control shall be responsible for supervising the installation and maintenance of approved erosion and sediment control measures – during and after construction and until the site has been restored to the satisfaction of council.

16. Waste materials generated through demolition, excavation and construction works are to be minimised by re-use on site, recycling or where re-use or recycling is not practical, disposal at an appropriate authorised waste facility.

All waste dockets and receipts regarding demolition, excavation and construction waste are to be retained on site to confirm which facility received the material for recycling or disposal.

The ongoing operation of Recycling and Waste Management Services is to be undertaken in accordance with the Waste Management Plan.

17. The site must be fenced throughout construction and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.
18. Environmental safeguards (silt curtains, booms etc.) are to be used during construction to ensure that there is no escape of turbid plumes into the aquatic environment. Turbid plumes have the potential to smother aquatic vegetation and have a deleterious effect on benthic organisms.

**E. Matters to be satisfied prior to the issue of Occupation Certificate:**

Note: Prior to the issue of an Occupation Certificate the principal certifying authority is to ensure that Council's assets, including road, kerb and gutter and drainage facilities adjacent or near to the site have not been damaged as a result of the works. Where such damage has occurred, it is to be repaired to Council's written satisfaction prior to the issue of an Occupation Certificate or suitable arrangements put in place to effect those repairs at a future date to Council's written satisfaction. Should this process not be followed, Council will pursue action against the principal accredited certifier in relation to the recovery of costs to effect such works.

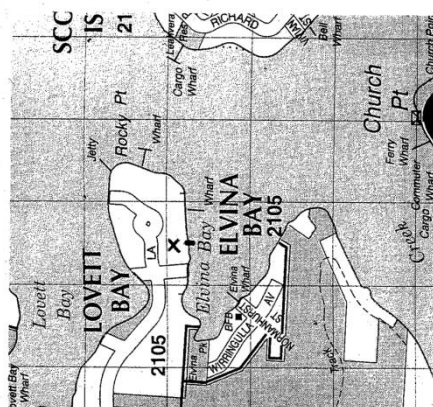
Note: It is an offence to occupy the building or part thereof to which this consent relates prior to the issue of an Occupation Certificate.

1. An Occupation Certificate application stating that the development complies with the Development Consent, the requirements of the Building Code of Australia and that a Construction Certificate has been issued must be obtained before the building is occupied or on completion of the construction work approved by this Development Consent.
2. Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.
3. The stormwater drainage system must be constructed and completed in accordance with the approved design and relevant Australian Standards.

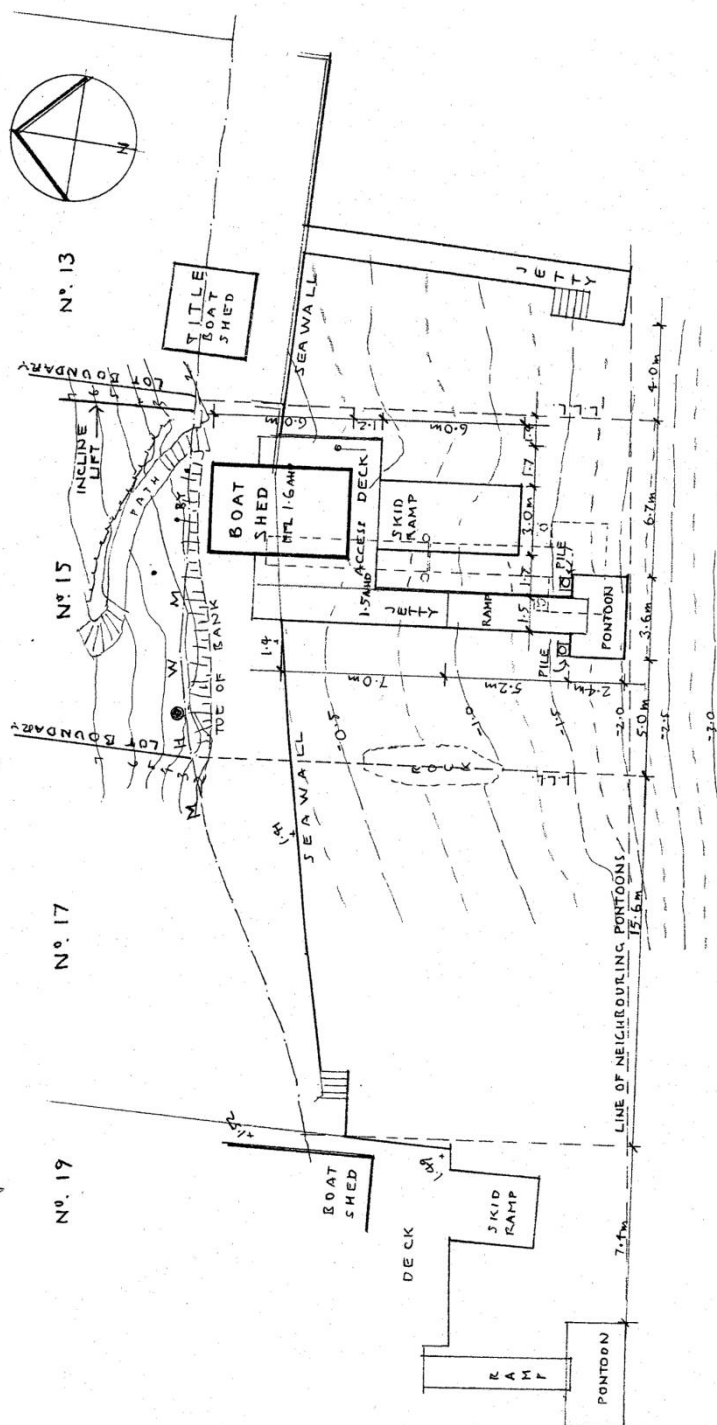
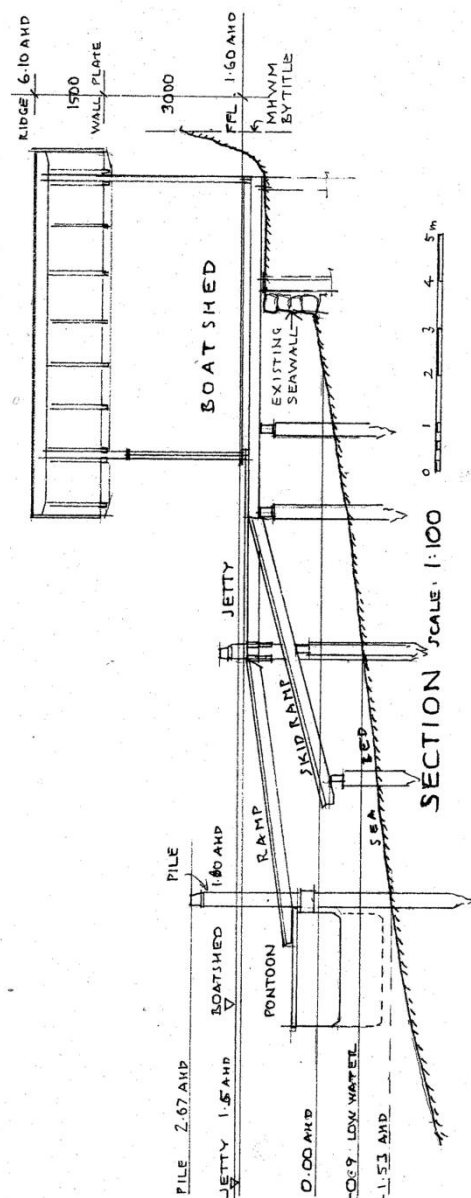
A plan showing pipe locations and diameters of the stormwater drainage system, together with certification by a Licensed Plumber or qualified practicing Civil Engineer that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards must be provided.

**G. Advice:**

1. Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act, 1979* (as amended) and/or the conditions of this Development Consent may result in the serving of penalty notices (on-the-spot fines) under the summary offences provisions of the above legislation or legal action through the Land and Environment Court, again pursuant to the above legislation.
2. It is the Project Managers responsibility to ensure that all of the Component Certificates/certification issued during the course of the project are lodged with the Principal Certifying Authority. Failure to comply with the conditions of approval or lodge the Component Certificates/certification will prevent the Principal Certifying Authority issuing an Occupation Certificate.
3. In accordance with Section 95(1) of the EPA Act 1979, this development consent lapses 5 years after the date from which this consent operates if the development is not commenced.
4. To ascertain the date upon which a consent operates, refer to Section 83 of the *Environmental Planning and Assessment Act, 1979* (as amended).
5. Should any of the determination not be acceptable, you are entitled to request reconsideration under Section 82A of the Environmental Planning and Assessment Act, 1979. Such request to Council must be made in writing, together with appropriate fees as advised at the time of lodgement of such request, within 6 months of the determination.
6. If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act, 1979, gives you a right of appeal to the Land and Environment Court within 6 months of the date of endorsement of this Consent.
7. This approval does not prejudice any action in respect of upgrading the building pursuant to the provisions of the Section 121B of the *Environmental Planning and Assessment (Amendment) Act, 1997*.



LOCATION PLAN



ELVINA BAY  
SITE PLAN SCALE: 1:200

SCALE: 1:200 AT A3

Revisions: \_\_\_\_\_ Date: \_\_\_\_\_  
**Stephen Crosby & Assoc.**  
**Pty. Ltd.**

**SCOTLAND ISLAND**  
PO Box 204 Church Pt. NSW 2105  
Tel 0409 047 513 Fax (02) 9999 6272

**NEW BOATSHED  
JETTY, RAMP &  
PONTOON  
15 STURDEE LANE  
ELVINA BAY  
Lot 8 DP 8013**

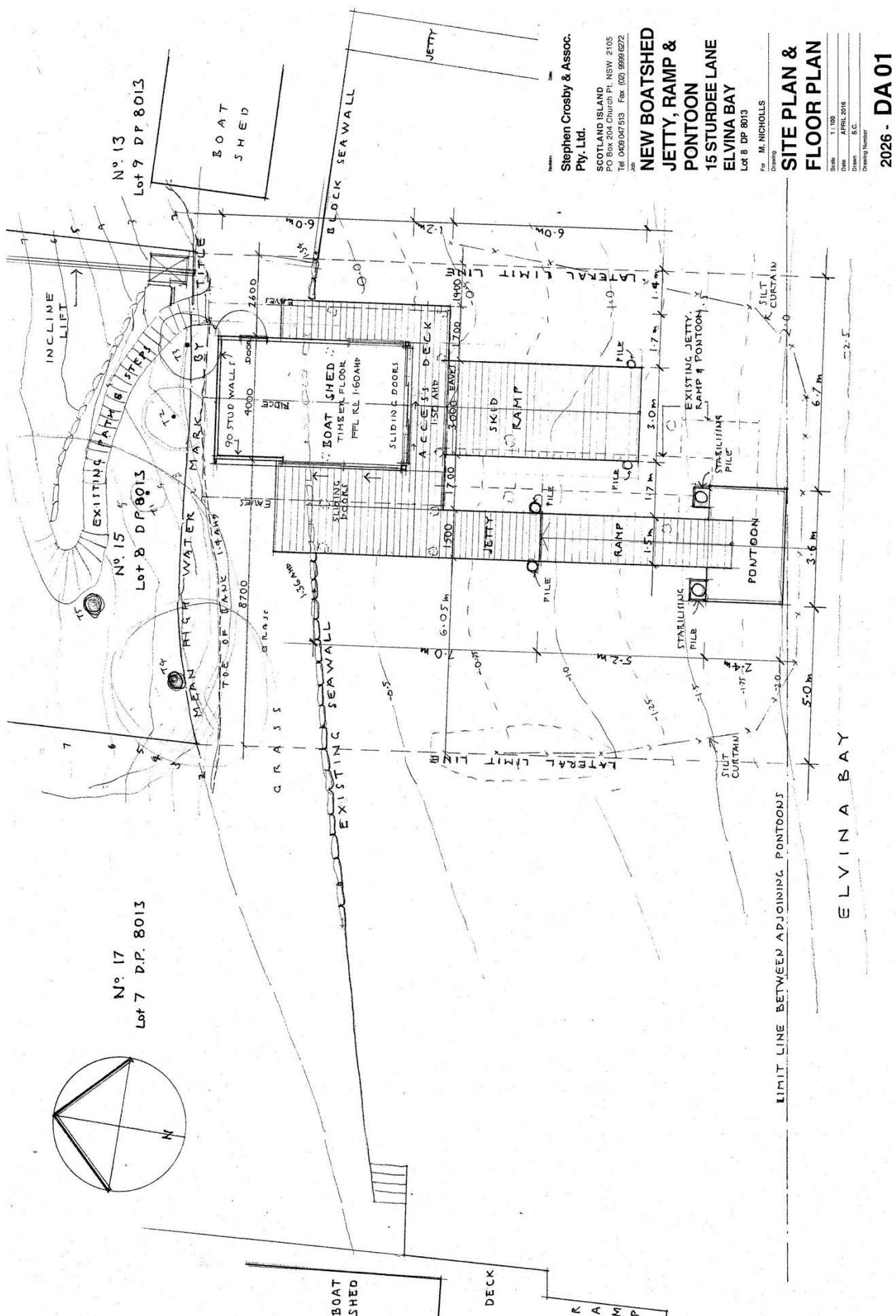
For **M. NICHOLLS**

# Drawing SITE PLAN & SECTION

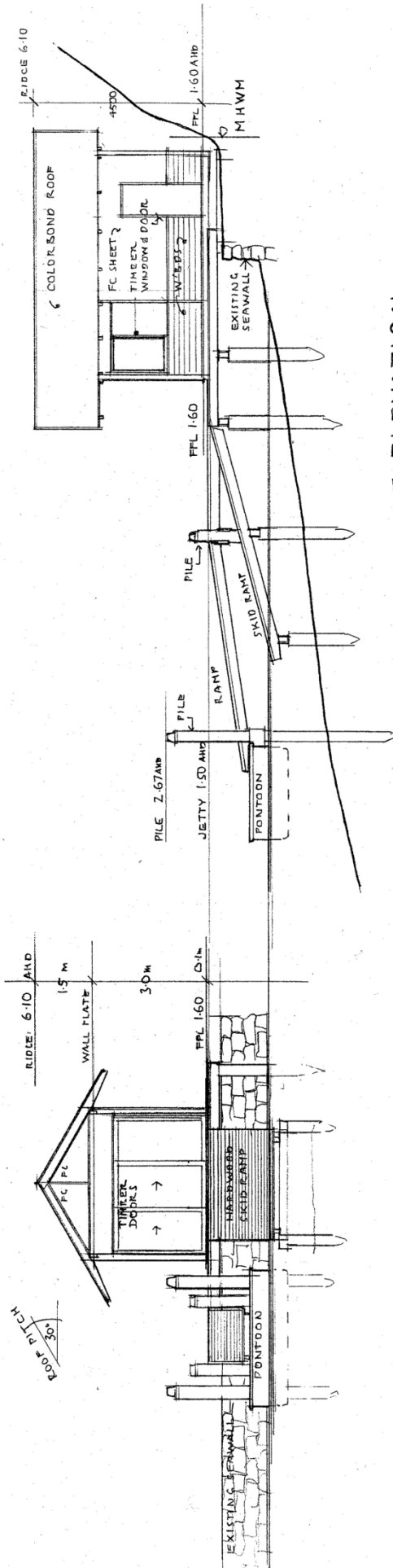
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Date	APRIL 2016
Drawn	S.C.
Drawing Number	

2026 - DA 02



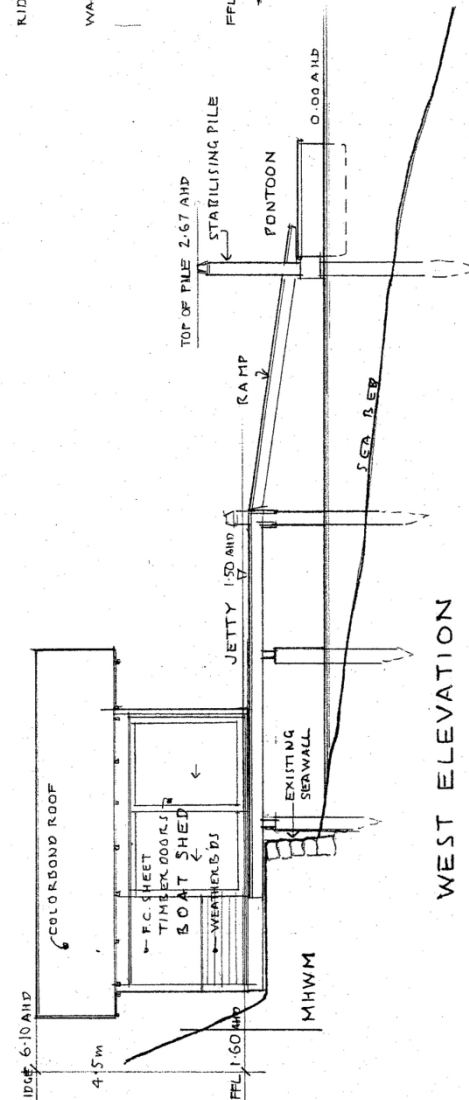




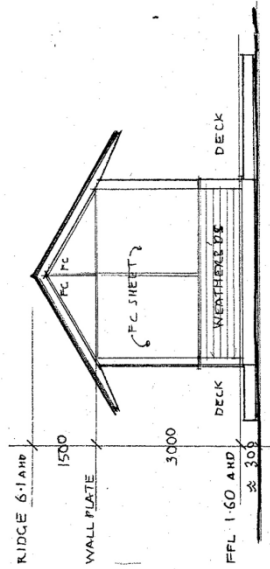


SOUTH ELEVATION

EAST ELEVATION



WEST ELEVATION



NORTH ELEVATION

Prepared by  
**Stephen Crosby & Assoc.  
Pty. Ltd.**

SCOTLAND ISLAND  
PO Box 204 Church Pt. NSW 2105  
Tel 0409 047 513 Fax (02) 9999 6272  
Job

**NEW BOATSHED  
JETTY, RAMP &  
PONTON**  
15 STURDEE LANE  
ELVINA BAY  
Lot 8 DP 8013

For M. NICHOLLS

Drawing

## ELEVATIONS

Scale 1:100  
Date AUGUST 2016  
Drawn S.C.  
Drawing Number

2026 - DA 03

**ITEM 3.3****48-52 SYDNEY ROAD, MANLY - ALTERATIONS AND  
ADDITIONS TO THE EXISTING BUILDING****REPORTING OFFICER****TRIM FILE REF****2017/317806****ATTACHMENTS**

- 1** [↓](#) **Assessment Report**
- 2** [↓](#) **Site and Elevation Plans**

**PURPOSE**

To refer the attached application for determination by the discretion of the Executive Manager Development Assessment

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**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

That Development Application No. DA086/2017 for alterations and additions to the existing building be approved subject to the conditions outlined in the report.

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## Development Assessment Report

2017/228582

<b>DA No.</b>	86/2017
<b>Site Address</b>	48-52 Sydney Road, Manly; SP 45730.
<b>Proposal</b>	Alterations and additions to the existing building.
<b>Officer</b>	Tom Prosser

### **SUMMARY:**

#### **Application Lodged:**

2 May 2017

#### **Applicant:**

Owners Corp SP 45730

#### **Owner:**

Proprietors of Strata Plan 45730 (by order of Administrator appointed by Order of NSW Administrative Tribunal)

#### **Estimated Cost:**

\$1,422,458.00

#### **Zoning:**

MLEP, 2013 – B2 Local Centre.

#### **Heritage:**

Town Centre Conservation. Adjacent to 1231- Congregational Church.

#### **Notification:**

4 May 2017 to 22 May 2017

#### **Submissions received:**

20

#### **Site Inspected:**

23 June 2017

#### **LEP (4.6) Variations proposed:**

Height.

#### **DCP Variations proposed:**

None.

#### **Recommendation:**

Approval

### **Subject Property and surrounding area**



The subject property is commonly known as 48-52 Sydney Road, Manly and legally known as SP 45730. The site is located on the northern side of Sydney Road. The allotment is irregular shape in shape and has a frontage to Sydney Road as well as Short Street Plaza.

#### **Property Burdens and Constraints**

There are no burdens or constraints that would preclude the proposed development.

#### **Site History/Background**

- DA377/2001- Refurbishment Commercial Development
- DA449/2002- New Building Change of Use/ New Use
- DA273/2005- Change of Use- Australian College of English.
- DA58/2013- Alterations and additions to an existing residential flat building. It is noted that this application was withdrawn.
- CD43/2016- Fitout of existing Hair Salon and various other commercial development approvals in regards to use.

#### **Description of proposed development**

The proposal involves alterations and additions to the existing building including:

- Glass doors and windows to ground floor tenancies
- Colourbond roof awning to ground floor tenancies
- Removal of balustrades to Level 1-5 balconies and replacement with aluminium and glass balustrades
- Replacement of privacy screens between apartments
- Removal of existing bulkhead at Level 1-5 and replacement with new rendered bulkhead.
- Rendered panels to ground floor
- Cover plates for drainage pipes
- Balustrade to Perimeter of Pool
- Waterproofing measures to balconies and roof

#### **Internal Referrals**

##### **Engineers Comments**

Council's Engineers offered no objections to the proposal subject to inclusion of recommended conditions of consent.

##### **Building Comments**

Council's Building Surveyor offered no objections to the proposal subject to inclusion of recommended conditions of consent.

##### **Waste**

Council's Waste Officer offered no objections to the proposal subject to inclusion of recommended conditions of consent.

##### **Heritage**

Council's Heritage Officer offered no objections to the proposal subject to inclusion of recommended conditions of consent. The Heritage officer also provides comment that 2HT07 would be applicable if the building is being painted.

#### **Assessing Officer Comment**

In lieu of this condition (2HT07), the drawing "A00-Context and Site Analysis- Rev B" has been included to the consent documents to ensure the proposed colour scheme complements surrounding heritage values. It is noted that the colours proposed in this scheme would be appropriate in type for the surrounding heritage character, this being the intention of the condition.



### External Referrals

#### **AUSGRID**

No comments were received from Ausgrid at the time of writing this report.

### Planning Comments

#### **Environmental Planning & Assessment Act 1979 – Section 79(C)(1)**

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) *the provisions of:*
  - (i) *any environmental planning instrument, and*

#### **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005:**

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles), Clause 21 (relating to biodiversity, ecology and environmental protection), Clause 22 (relating to public access to and use of foreshores and waterways), Clause 23 (relating to maintenance of a working harbour), Clause 25 (relating to foreshore and waterways scenic quality) and Clause 26 (relating to maintenance, protection and enhancement of views) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

#### **Manly Local Environmental Plan 2013**

The subject site is located in Zone B2 Local Centre under Manly LEP, 2013 and contains a mixed use development. The uses include commercial premises, being retail and business premises. Above these ground floor premises exist dwellings which fit the definition for shop-top housing under the Manly LEP, 2013.

### **Zone B2 Local Centre**

#### **Objectives of zone**

- *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 proposal provides alterations and additions to the existing mixed use development. These changes provide refurbishment to the building whilst retaining the uses that serve the needs of people in the area.

- *To encourage employment opportunities in accessible locations.*

The proposal would maintain the commercial premises which provide employment opportunities in the area.

- *To maximise public transport patronage and encourage walking and cycling.*

The refurbishment does not relate to public, transport, walking or cycling.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

The refurbishment relates substantially to modifications to the awning area and to the balconies of apartments. Subject to conditions including obscuring the balustrades to balconies for privacy, the proposal would ensure amenity for people who live in the area.

**Part 4 Principal development standards**

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

<b>4.</b>	<b><u>Principal Development Standards</u></b>	<b><u>Requirement</u></b>	<b><u>Proposed</u></b>	<b><u>Complies Yes/No</u></b>	<b><u>Comments</u></b>
4.3	Height of buildings	12m (south section of the site)  25m (northern section of the site)	17.71m	No – Existing maintained.	The non-compliance relates to the removal of existing balustrades and replacement with new balustrades at the 4 <sup>th</sup> and 5 <sup>th</sup> levels (south elevation).
4.4	Floor Space Ratio	N/A	N/A	N/A	Proposal is for external changes not related to floor space.

**Part 5 Miscellaneous Provisions**

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

<b>5.</b>	<b><u>Miscellaneous Provisions</u></b>	<b><u>Applies</u></b>	<b><u>Complies</u></b>	<b><u>Comments</u></b>
5.10	Heritage Conservation	Yes	Yes	The proposed site is within the Town Centre conservation area under the Manly LEP, 2013. Council's Heritage officer provided no objection to the works, subject to conditions.

**Part 6 Local Provisions**

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

<b>6.</b>	<b><u>Local Provisions</u></b>	<b><u>Applies</u></b>	<b><u>Complies</u></b>	<b><u>Comments</u></b>
6.1	Acid Sulphate Soils	No	N/A	-
6.2	Earthworks	No	N/A	-
6.3	Flood Planning	No	N/A	-
6.4	Stormwater Management	Yes	Yes	Subject to conditions.
6.5	Terrestrial Biodiversity	No	N/A	-
6.6	Riparian land and watercourses	No	N/A	-
6.7	Wetlands	No	N/A	-
6.8	Landslide Risk	No	N/A	-



6.9	Foreshore Scenic Protection Area	Yes	Yes	The proposal including changes to doors, awnings, privacy screens and balconies would not have any unreasonable impact on aesthetic amenity or views. The works relate to refurbishment which would make no substantial change to the presentation of bulk in the scenic protection area. In particular, the development is suitable in the area as it provides a similar type and design of features including the refurbishment of the balconies and the upgrade of the awning.
6.10	Limited development on foreshore area	No	N/A	-
6.11	Active street frontages	No	N/A	The proposed development is not for erection of a building or a change of use.
6.12	Essential services	Yes	Yes	Subject to conditions and existing.
6.13	Design Excellence	Yes	Yes	See comment below.

Comment:

**Design Excellence**

Consideration is given to the following provisions of (4) under Clause 6.13 as follows:

(a) *contains buildings that consist of a form, bulk, massing and modulation that are likely to overshadow public open spaces, and*

Comment:

The proposed form, bulk, massing and modulation is similar to existing and includes to works at balconies and to ground level awnings. This would have no unreasonable impact on overshadowing to public open space.

(b) *is likely to protect and enhance the streetscape and quality of the public realm, and*

Comment:

The refurbishment including external alterations and additions would provide a positive upgrade to the building without having any negative impact on heritage values of the streetscape (as supported by the comments under the internal referrals by the heritage officer).

(c) *clearly defines the edge of public places, streets, lanes and plazas through separation, setbacks, amenity, and boundary treatments, and*

Comment:

The proposed awning at Sydney Road and Short Street will be in place of the existing metal bars that protrude from the existing shops. This is a positive upgrade in terms of visual amenity and is consistent with other shops in Sydney Road as well as the existing awning structure at the front of the existing shop top housing entrance.

(d) *minimises street clutter and provides ease of movement and circulation of pedestrian, cycle, vehicular and service access, and*

Comment:

There are no proposed works at ground level and as a result there would be no impact on movement or circulation at ground level.

- (e) *encourages casual surveillance and social activity in public places, streets, laneways and plazas, and*

Comment:

The balconies are retained and subject to conditions are to be provided with obscured glazing for the balustrades. This is an appropriate compromise to minimise privacy impacts through overlooking to the balconies whilst also retaining opportunity for looking over these balustrades in the interests of casual surveillance.

- (f) *is sympathetic to its setting, including neighbouring sites and existing or proposed buildings, and*

Comment:

Council's Heritage officer provided no objection to the proposal in terms of its relationship with the neighbouring heritage item (1231- Congregational Church) or its relationship with the Town Centre Conservation area. Additionally, the proposal provides alterations to the shop fronts which are consistent with the character of shops in the vicinity and changes to balconies which are sympathetic due to the lack of additional bulk.

- (g) *protects and enhances the natural topography and vegetation including trees, escarpments or other significant natural features, and*

Comment:

The works are above ground level and to the existing building. This would have no unreasonable impact on any natural features.

- (h) *promotes vistas from public places to prominent natural and built landmarks, and*

Comment:

The proposal will allow for adequate vistas from public places. The views provided under and around the proposed awning would be a reasonable outcome due to the consistency of this awning with the surrounding area.

- (i) *uses high standards of architectural design, materials and detailing appropriate to the building type and location, and*

Comment:

The proposal provides awnings to the ground level shops and balustrades to the residential apartments. Given balustrades are required for residential balconies and the shop awning is consistent with shops in the vicinity, the development is appropriate in terms of type and location.

- (j) *responds to environmental factors such as wind, reflectivity and permeability of surfaces, and*

Comment:

Subject to conditions, the features respond positively to environmental factors. The mix in material of aluminium and glass would have no unreasonable impact in terms of glare.

- (k) *coordinates shared utility infrastructure to minimise disruption at street level in public spaces.*

Comment:

The proposed awning would provide shelter and shading for the public whilst minimising visual disruption to public open space.

**79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and**

There is no applicable Draft Planning Instrument.

**79C(1)(a)(iii) - any development control plan, and**

**Mainly Development Control Plan 2013:**

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards, an assessment is included in the Planning Comments.

**Part 3 General Principles of Development**

<u>Issues</u>	<u>Consistent with principle</u>	<u>Inconsistent with principle</u>
Townscape	✓ See comment	
Heritage – In Vicinity	✓ See comment	
Sunlight Access and Overshadowing	✓	
Privacy and Security	✓ See comment	
Maintenance of Views	✓	
Sustainability	✓	
Accessibility	✓	
Stormwater management	✓	
Waste Management	✓	
Mechanical Plant Equipment	✓	

**Comment:**

**3.1 Streetscapes and Townscapes**

Townscape

The proposal is consistent with the objectives under Clause 3.1 for Townscape as follows:

*Objective 4) To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.*

Not applicable.

*Objective 5) To assist in maintaining the character of the locality.*

The proposal provides alterations to the shop fronts which are consistent with the character of shops in the vicinity and changes to balconies do not add any bulk which would be inconsistent with existing balconies or associated character of the area.

*Objective 6) To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.*

The proposed alterations are above the ground and would have no significant impact on pedestrian movements. The proposed awning provides a positive outcome in terms of shelter and shade for pedestrians.

*Objective 7) To minimise negative visual impact, in particular at the arterial road entry points into the Council area and the former Manly Council area, so as to promote townscape qualities.*

The proposal involves alterations, additions and replacements are predominately contained within the existing building structure envelope. As a result the refurbishment would provide a change in terms of visual nature but would not provide any bulk which could cause unreasonable visual impact. Instead, the proposal would replace older structures with complementary new structures to minimise visual impact and promote townscape qualities.

The proposal will also maintain consistency with the provisions of 3.1.3.1c) for design details under the Manly DCP, 2013. This includes that the works will maintain a similar scale, proportion and line of the visible facades as well as maintaining a pattern of openings, height, visual aesthetics, style and scale that will complement the surrounding townscape.

### 3.2 Heritage Considerations

The proposal is consistent with the objectives under Clause 3.2 for Heritage Considerations as follows:

*Objective 1) To retain and conserve environmental heritage and cultural significance of Manly including:*

- significant fabric, setting, relics and view associated with heritage items and conservation areas;*
- the foreshore, including its setting and associated views; and*
- potential archaeological sites, places of Aboriginal significance and places of natural significance.*

The works to the balconies are contained within the existing building envelope and the proposed awning is consistent with the predominant and desired style of the area. As a result, the proposed development is of a suitable style, bulk and type to retain and conserve heritage values.

*Objective 2) To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality.*

The modifications relate principally to upgrading existing features of the building. An upgrade to these features without substantially changing the style and type of development provides a modification that appropriately conserves heritage in the vicinity.

*Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items and,*

*Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.*

The subject site is in the Town Centre Conservation Area and is adjacent to heritage item I231-Congregational Church. The works relate mainly to modifications to existing features of the building above ground level. As a result, vistas are maintained at ground level and the additions would not involve any unreasonable bulk which could detract from the heritage significance of the item or conservation area.

*Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation.*

The proposal is consistent with heritage provisions of the Manly LEP and Manly DCP. This indicates heritage management and conservation has been sufficiently integrated into the process for planning development.



### 3.4.2 Privacy and Security

The proposal is consistent with the objectives under Clause 3.4.2 for Privacy as follows:

*Objective 1) To minimise loss of privacy to adjacent and nearby development by:*

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings and,*

*Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.*

The proposal involves the replacement of the existing balustrades to the shop top housing with new aluminium and glass balustrades. As a result of the extent of these balconies and close proximity to public open space, a glass balustrade would not appropriately minimise visual privacy through overlooking. It is therefore recommended in the conditions that the glass portion of the proposed balustrade is obscured to minimise loss of privacy. In addition to this, the replacement of the privacy screens between apartment balconies will ensure appropriate minimisation of privacy loss without unreasonably compromising any access to light, air or views.

*Objective 3) To encourage awareness of neighbourhood security.*

The existing balconies remain as areas which allow appropriate opportunity for awareness of neighbourhood security.

### Part 4 - Development Controls

Site Area: 1335m <sup>2</sup>	<u>Permitted/Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
Awnings	Generally consistent with the streetscape.	Generally consistent with the streetscape.	Yes.

### Part 5 - Special Character Areas and Sites

<u>Special Character Areas and Sites</u>	<u>Applicable</u>	<u>Not Applicable</u>
Conservation Area	✓ Consistent with provisions.	
Foreshore Scenic Protection Area	✓ Consistent with provisions.	
Threatened Species and Critical Habitat		✓
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓

#### Comment:

**79C(1)(a)(iii)a) - any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and**  
No planning agreement has been entered into in relation to the proposed development.

#### **79C(1)(a) (iv) - the regulations**

The proposed development has been assessed having regard to the Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory.

**79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)**

There is no Coastal Zone Management Plan applicable for the Manly area.

**79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

The proposed development as modified by the conditions of consent is not considered to have any detrimental impact on the natural and built environments and is accordingly recommended for approval.

**79C(1) (c) - the suitability of the site for the development,**

The proposed development as modified by the conditions of consent is considered to be suitable for the site.

**79C(1) (d) - any submissions made in accordance with this Act or the regulations**

The application was notified to nearby and adjoining property owners in accordance with Section 2.2 of Council's Development Control Plan 2013 with 20 submissions received from the following objectors raising the following concerns:

Submission and Address	Main Issues raised in the submission	Comments on submission
1. Confidential	<ul style="list-style-type: none"> <li>Aesthetics of awning is not in keeping and does not maintain open outlook.</li> <li>Reduction in privacy caused by glass balustrades.</li> </ul>	<ul style="list-style-type: none"> <li>An assessment has been conducted earlier in this report for Design Excellence under the Manly LEP and Townscape under the Manly DCP. This assessment has found the proposal to be complementary with the surroundings.</li> <li>Condition ANS01 has been imposed to require obscuring to ensure reasonable levels of privacy are maintained between the balconies and public open space.</li> </ul>
2. J. Roenneberg on behalf of Festus Pty Ltd.	<ul style="list-style-type: none"> <li>The proposed development has not been submitted by lot owners. The proposed development should be considered at a General Meeting.</li> <li>Privacy issues related to glass balustrades and aluminum slats.</li> <li>Negative change to aesthetics.</li> </ul>	<ul style="list-style-type: none"> <li>A valid Owner's consent has been provided with the application. This includes a Strata seal that has been received by an administrator who was appointed by Order of the NSW Administrative Tribunal.</li> <li>Condition ANS01 has been imposed to require obscuring to ensure reasonable levels of privacy are maintained between the balconies and public open space.</li> </ul>



		<ul style="list-style-type: none"> <li>An assessment has been conducted earlier in this report for Design Excellence under the Manly LEP and Townscape under the Manly DCP. This assessment has found the proposal to be reasonable in terms of aesthetic change.</li> </ul>
3. Confidential	<ul style="list-style-type: none"> <li>Proposed development has not been submitted to nor approved by lot owners at general meeting. The proposal should be considered at a general meeting.</li> <li>Glass balustrades and powder coated aluminum slats will cause privacy issues.</li> <li>The solid colourbond awning will change aesthetics and reduce visual view. Any awning should be minimal in mass and not extend beyond front entrance.</li> </ul>	<ul style="list-style-type: none"> <li>A valid Owner's consent has been provided with the application. This includes a Strata seal that has been received by an administrator who was appointed by Order of the NSW Administrative Tribunal.</li> <li>Condition ANS01 has been imposed to require obscuring to ensure reasonable levels of privacy are maintained between the balconies and public open space.</li> <li>An assessment has been conducted earlier in this report for Design Excellence under the Manly LEP and Townscape under the Manly DCP. This assessment has found the awning be reasonable aesthetically. This is due to its complementary nature with surrounding development and reasonable bulk to be consistent with desired future character.</li> </ul>
4. C. Benisch, Lot 115.	<ul style="list-style-type: none"> <li>The proposed awning would change aesthetics and feel of plaza. The open aspect of the plaza should be kept.</li> </ul>	<ul style="list-style-type: none"> <li>An assessment has been conducted earlier in this report for Design Excellence under the Manly LEP and Townscape under the Manly DCP. This assessment has found the awning be reasonable aesthetically. This is due to its complementary nature with surrounding development and</li> </ul>

		reasonable bulk to be consistent with desired future character.
5. A. Cantle. Flat 111, Waterside Apartments.	<ul style="list-style-type: none"> <li>• There has been no approval by owners at a General meeting.</li> <li>• Glass balustrades impact on privacy.</li> <li>• The proposed awning does not appear to be subtle.</li> </ul>	<ul style="list-style-type: none"> <li>• A valid Owner's consent has been provided with the application. This includes a Strata seal that has been received by an administrator who was appointed by Order of the NSW Administrative Tribunal.</li> <li>• Condition ANS01 has been imposed to require obscuring to ensure reasonable levels of privacy are maintained between the balconies and public open space.</li> <li>• An assessment has been conducted earlier in this report for Design Excellence under the Manly LEP and Townscape under the Manly DCP. This assessment has found the awning be reasonable aesthetically. This is due to its complementary nature with surrounding development and reasonable bulk to be consistent with desired future character.</li> </ul>
6. K Davidson, 112, SP45730.	<ul style="list-style-type: none"> <li>• Proposed development has not been submitted to nor approved by lot owners at general meeting. The proposal should be considered at a general meeting.</li> <li>• Glass balustrades and powder coated aluminum slats will cause privacy issues.</li> <li>• The solid colourbond awning will change aesthetics and reduce visual view. Any awning should be minimal in mass and not extend beyond front entrance.</li> </ul>	<ul style="list-style-type: none"> <li>• A valid Owner's consent has been provided with the application. This includes a Strata seal that has been received by an administrator who was appointed by Order of the NSW Administrative Tribunal.</li> <li>• Condition ANS01 has been imposed to require obscuring to ensure reasonable levels of privacy are maintained between the balconies and public open space.</li> <li>• An assessment has been conducted earlier in this report for Design</li> </ul>

		<p>Excellence under the Manly LEP and Townscape under the Manly DCP. This assessment has found the awning be reasonable aesthetically. This is due to its complementary nature with surrounding development and reasonable bulk to be consistent with desired future character.</p>
<p>7. P. Agius. 412/410/411. SP45730. (412/48 Sydney Road.)</p>	<ul style="list-style-type: none"> <li>Proposed development has not been submitted to nor approved by lot owners at general meeting. The proposal should be considered at a general meeting.</li> <li>Glass balustrades and powder coated aluminum slats will cause privacy issues.</li> <li>The solid colourbond awning will change aesthetics and reduce visual view. Any awning should be minimal in mass and not extend beyond front entrance.</li> </ul>	<ul style="list-style-type: none"> <li>A valid Owner's consent has been provided with the application. This includes a Strata seal that has been received by an administrator who was appointed by Order of the NSW Administrative Tribunal.</li> <li>Condition ANS01 has been imposed to require obscuring to ensure reasonable levels of privacy are maintained between the balconies and public open space.</li> <li>An assessment has been conducted earlier in this report for Design Excellence under the Manly LEP and Townscape under the Manly DCP. This assessment has found the awning be reasonable aesthetically. This is due to its complementary nature with surrounding development and reasonable bulk to be consistent with desired future character.</li> </ul>
<p>8. Hanne Bruin, Lifeline Northern Beaches Inc.</p>	<ul style="list-style-type: none"> <li>Impact of awning of aesthetics. Open aspect of plaza should be kept.</li> </ul>	<ul style="list-style-type: none"> <li>An assessment has been conducted earlier in this report for Design Excellence under the Manly LEP and Townscape under the Manly DCP. This assessment has found the awning be reasonable aesthetically. This is due to its complementary nature</li> </ul>

		with surrounding development and reasonable bulk to be consistent with desired future character.
9. E. Kwiatkowski, 207/48-52 Sydney Road, Manly.	<ul style="list-style-type: none"> <li>The proposal goes beyond reasonable refurbishment. It would have a negative impact on the plaza.</li> </ul>	<ul style="list-style-type: none"> <li>An assessment has been conducted earlier in this report for Design Excellence under the Manly LEP and Townscape under the Manly DCP. This assessment has found the proposal to be reasonable in terms of refurbishment.</li> </ul>
10. E. Hutter. 114, SP45730.	<ul style="list-style-type: none"> <li>Proposed development has not been submitted to nor approved by lot owners at general meeting. The proposal should be considered at a general meeting.</li> <li>Glass balustrades and powder coated aluminum slats will cause privacy issues.</li> <li>The solid colourbond awning will change aesthetics and reduce visual view. Any awning should be minimal in mass and not extend beyond front entrance.</li> </ul>	<ul style="list-style-type: none"> <li>A valid Owner's consent has been provided with the application. This includes a Strata seal that has been received by an administrator who was appointed by Order of the NSW Administrative Tribunal.</li> <li>Condition ANS01 has been imposed to require obscuring to ensure reasonable levels of privacy are maintained between the balconies and public open space.</li> <li>An assessment has been conducted earlier in this report for Design Excellence under the Manly LEP and Townscape under the Manly DCP. This assessment has found the awning be reasonable aesthetically. This is due to its complementary nature with surrounding development and reasonable bulk to be consistent with desired future character.</li> </ul>
11. Plaza Barber Shop	<ul style="list-style-type: none"> <li>Awning would have negative impact on aesthetics.</li> <li>Open aspect should be kept in mind and more sympathy needed in this public zone.</li> </ul>	<ul style="list-style-type: none"> <li>An assessment has been conducted earlier in this report for Design Excellence under the Manly LEP and Townscape under the Manly DCP. This assessment has found the awning be reasonable</li> </ul>

		<p>aesthetically. This is due to its complementary nature with surrounding development and reasonable bulk to be consistent with desired future character.</p> <ul style="list-style-type: none"> <li>The awning is reasonably consistent with existing and surrounding structures in terms of bulk and scale. It will also maintain an open aspect through looking under, over and around so that the majority of the plaza vista is maintained from all angles.</li> </ul>
12. M. Agius. 219/48 Sydney Road. Owner of 416/219/223 SP45730.	<ul style="list-style-type: none"> <li>Proposed development has not been submitted to nor approved by lot owners at general meeting. The proposal should be considered at a general meeting.</li> <li>Glass balustrades and powder coated aluminum slats will cause privacy issues.</li> <li>The solid colourbond awning will change aesthetics and reduce visual view. Any awning should be minimal in mass and not extend beyond front entrance.</li> </ul>	<ul style="list-style-type: none"> <li>A valid Owner's consent has been provided with the application. This includes a Strata seal that has been received by an administrator who was appointed by Order of the NSW Administrative Tribunal.</li> <li>Condition ANS01 has been imposed to require obscuring to ensure reasonable levels of privacy are maintained between the balconies and public open space.</li> <li>An assessment has been conducted earlier in this report for Design Excellence under the Manly LEP and Townscape under the Manly DCP. This assessment has found the awning be reasonable aesthetically. This is due to its complementary nature with surrounding development and reasonable bulk to be consistent with desired future character.</li> </ul>

<p>13. Numerous submissions, Dome Hairdressing</p>	<ul style="list-style-type: none"> <li>• Awning would have negative impact on aesthetics.</li> <li>• Open aspect should be kept in mind and more sympathy needed in this public zone.</li> </ul>	<ul style="list-style-type: none"> <li>• An assessment has been conducted earlier in this report for Design Excellence under the Manly LEP and Townscape under the Manly DCP. This assessment has found the awning be reasonable aesthetically. This is due to its complementary nature with surrounding development and reasonable bulk to be consistent with desired future character.</li> <li>• The awning is reasonably consistent with existing and surrounding structures in terms of bulk and scale. It will also maintain an open aspect through looking under, over and around so that the majority of the plaza vista is maintained from all angles.</li> </ul>
<p>14. Queenscliff Plumbing.</p>	<ul style="list-style-type: none"> <li>• Proposed development has not been submitted to nor approved by lot owners at general meeting. The proposal should be considered at a general meeting.</li> <li>• Glass balustrades and powder coated aluminum slats will cause privacy issues.</li> <li>• The solid colourbond awning will change aesthetics and reduce visual view. Any awning should be minimal in mass and not extend beyond front entrance.</li> </ul>	<ul style="list-style-type: none"> <li>• A valid Owner's consent has been provided with the application. This includes a Strata seal that has been received by an administrator who was appointed by Order of the NSW Administrative Tribunal.</li> <li>• Condition ANS01 has been imposed to require obscuring to ensure reasonable levels of privacy are maintained between the balconies and public open space.</li> <li>• An assessment has been conducted earlier in this report for Design Excellence under the Manly LEP and Townscape under the Manly DCP. This assessment has found the awning be reasonable aesthetically. This is due to its complementary nature with surrounding development and</li> </ul>



		reasonable bulk to be consistent with desired future character.
15 F. Provost. SP 45730	<ul style="list-style-type: none"> <li>Proposed development has not been submitted to nor approved by lot owners at general meeting. The proposal should be considered at a general meeting.</li> <li>Glass balustrades and powder coated aluminum slats will cause privacy issues.</li> <li>The solid colourbond awning will change aesthetics and reduce visual view. Any awning should be minimal in mass and not extend beyond front entrance.</li> </ul>	<ul style="list-style-type: none"> <li>A valid Owner's consent has been provided with the application. This includes a Strata seal that has been received by an administrator who was appointed by Order of the NSW Administrative Tribunal.</li> <li>Condition ANS01 has been imposed to require obscuring to ensure reasonable levels of privacy are maintained between the balconies and public open space.</li> <li>An assessment has been conducted earlier in this report for Design Excellence under the Manly LEP and Townscape under the Manly DCP. This assessment has found the awning be reasonable aesthetically. This is due to its complementary nature with surrounding development and reasonable bulk to be consistent with desired future character.</li> </ul>
16. K Crnjac.	<ul style="list-style-type: none"> <li>Awning would have negative impact on aesthetics.</li> <li>Open aspect should be kept in mind and more sympathy needed in this public zone.</li> </ul>	<ul style="list-style-type: none"> <li>An assessment has been conducted earlier in this report for Design Excellence under the Manly LEP and Townscape under the Manly DCP. This assessment has found the awning be reasonable aesthetically. This is due to its complementary nature with surrounding development and reasonable bulk to be consistent with desired future character.</li> </ul>

17. Manly Bakery.	<ul style="list-style-type: none"> <li>Proposed development has not been submitted to nor approved by lot owners at general meeting. The proposal should be considered at a general meeting.</li> <li>Glass balustrades and powder coated aluminum slats will cause privacy issues.</li> <li>The solid colourbond awning will change aesthetics and reduce visual view. Any awning should be minimal in mass and not extend beyond front entrance.</li> </ul>	<ul style="list-style-type: none"> <li>A valid Owner's consent has been provided with the application. This includes a Strata seal that has been received by an administrator who was appointed by Order of the NSW Administrative Tribunal.</li> <li>Condition ANS01 has been imposed to require obscuring to ensure reasonable levels of privacy are maintained between the balconies and public open space.</li> <li>An assessment has been conducted earlier in this report for Design Excellence under the Manly LEP and Townscape under the Manly DCP. This assessment has found the awning be reasonable aesthetically. This is due to its complementary nature with surrounding development and reasonable bulk to be consistent with desired future character.</li> </ul>
18. PH Clinic, Nicola Johnson. SP45730	<ul style="list-style-type: none"> <li>Proposed development has not been submitted to nor approved by lot owners at general meeting. The proposal should be considered at a general meeting.</li> <li>Glass balustrades and powder coated aluminum slats will cause privacy issues.</li> <li>The solid colourbond awning will change aesthetics and reduce visual view. Any awning should be minimal in mass and not extend beyond front entrance.</li> </ul>	<ul style="list-style-type: none"> <li>A valid Owner's consent has been provided with the application. This includes a Strata seal that has been received by an administrator who was appointed by Order of the NSW Administrative Tribunal.</li> <li>Condition ANS01 has been imposed to require obscuring to ensure reasonable levels of privacy are maintained between the balconies and public open space.</li> <li>An assessment has been conducted earlier in this report for Design Excellence under the Manly LEP and Townscape under the Manly DCP. This</li> </ul>

		assessment has found the awning be reasonable aesthetically. This is due to its complementary nature with surrounding development and reasonable bulk to be consistent with desired future character.
19. Robert, Builder. SP 45730.	<ul style="list-style-type: none"> <li>Proposed development has not been submitted to nor approved by lot owners at general meeting. The proposal should be considered at a general meeting.</li> <li>Glass balustrades and powder coated aluminum slats will cause privacy issues.</li> <li>The solid colourbond awning will change aesthetics and reduce visual view. Any awning should be minimal in mass and not extend beyond front entrance.</li> </ul>	<ul style="list-style-type: none"> <li>A valid Owner's consent has been provided with the application. This includes a Strata seal that has been received by an administrator who was appointed by Order of the NSW Administrative Tribunal.</li> <li>Condition ANS01 has been imposed to require obscuring to ensure reasonable levels of privacy are maintained between the balconies and public open space.</li> <li>An assessment has been conducted earlier in this report for Design Excellence under the Manly LEP and Townscape under the Manly DCP. This assessment has found the awning be reasonable aesthetically. This is due to its complementary nature with surrounding development and reasonable bulk to be consistent with desired future character.</li> </ul>
20. S. Panetta,	<ul style="list-style-type: none"> <li>Inappropriate awning in terms of visual nature. Not in keeping with surrounding structures. A glass awning would be more appropriate.</li> <li>The balcony balustrades will impact privacy including noise.</li> </ul>	<ul style="list-style-type: none"> <li>An assessment has been conducted earlier in this report for Design Excellence under the Manly LEP and Townscape under the Manly DCP. This assessment has found the awning be reasonable aesthetically. This is due to its complementary nature with surrounding development and reasonable bulk to be</li> </ul>

		<p>consistent with desired future character.</p> <ul style="list-style-type: none"> <li>Condition ANS01 has been imposed to require obscuring to ensure reasonable levels of privacy are maintained between the balconies and public open space. In this circumstance, the replacement of balustrade including associated material change would not unreasonably impact on acoustical privacy.</li> </ul>
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**79C(1) (e) - the public interest.**

The proposed development as modified by the conditions of consent is not considered to have an adverse impact on the public interest.

**S94 Contribution towards provision or improvement of amenities or services**

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- (1) *If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*
- (a) *the dedication of land free of cost, or*
  - (b) *the payment of a monetary contribution, or both.*
- (2) *A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'*

**Comments:**

In this case, the proposal does involve any addition to floor space and as a result contributions are not applicable.

**CONCLUSION:**

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory.

**RECOMMENDATION**

That Development Application No. DA86/2017 for alterations and additions to the existing building at 48-52 Sydney Road be **approved** subject to the following conditions:

**GENERAL CONDITIONS**

- The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

*Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. DA 86/2017:*

Plan No. / Title	Issue/ Revision & Date	Prepared by
A00- Context, Locality and Site Analysis	Rev B- 25/09/14	MK Consulting
A01- Site Plan- Existing and Proposed	Rev B- 25/09/14	MK Consulting
A05- East Elevation- Proposed	Rev B- 25/09/14	MK Consulting
A06- East Elevation- Proposed	Rev B- 25/09/14	MK Consulting
A07- North Elevation- Proposed	Rev B- 25/09/14	MK Consulting
A08- North Elevation- Proposed	Rev B- 25/09/14	MK Consulting
A09- Sectional Elevations & Balustrade Detail- Proposed	Rev B- 25/09/14	MK Consulting
A10- Ground Floor Plan- Proposed	Rev B- 25/09/14	MK Consulting

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

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council

## 2. Prescribed Conditions

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

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

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

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



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

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

Reason: Legislative Requirement (DACPLB09)

**1A (1AP04)**

Alteration and demolition of the existing building is limited to that documented on the approved plans (by way of notation). No approval is given or implied for removal and/or rebuilding of any portion of the existing building which is not shown to be altered or demolished.

Reason: To ensure compliance with the approved development.

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

**ANS01**

The glass portion of the balustrade to all residential apartments is to be obscured. Details notating compliance are to be provided to the certifying authority prior to the issue of a Construction certificate.

Reason: To ensure adequate privacy between the balconies of apartments and public open space.

**2A (2CD01)**

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit as per the current rates in Council's Fees and Charges. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

**Note:** Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicants interest for it to be as full and detailed as possible.

Where by Council is not the Principal Certifying Authority, refund of the trust fund deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority and infrastructure inspection by Council.

Reason: To ensure security against possible damage to Council property.



### 3 (2CD03)

The applicant is to lodge a Hoarding Application with Council for any protective hoardings, fences and lighting which are to be provided during demolition, excavation and building works. The Hoarding Application is to be submitted to Council with the appropriate fee, prior to any works on site or prior to the issue of the Construction Certificate.

All hoardings must be in accordance with Council's Hoarding Application Form and must comply with the requirements of the Department of Industrial Relations, Construction Safety Act, the WorkCover Authority and relevant Australian Standards.

Note: On corner properties, particular attention is to be given to the provision of adequate sight distances.

Reason: To ensure public safety and amenity on public land.

### 4 (2CD05)

Detailed engineering drawings of all work must be submitted for approval by the Council/Accredited Certifier prior to the release of the Construction Certificate.

Reason: To ensure the provision of public infrastructure of an appropriate quality arising from the development works to service the development.

### 5 (2CD07)

A Certificate of Adequacy signed by a practising structural engineer stating the existing structure is capable of supporting the proposed additions, is to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: The existing building must be able to support proposed additional loading.

### 6 (2DS06)

All balconies (above 2 storeys) are to be graded and drained to an internally concealed drainage system.

Reason: To ensure adequate provision is made for stormwater drainage from the balconies.

### 7 (2FR01)

A Fire Safety Schedule specifying the fire safety measures (both current and proposed) which should be implemented in the building premises must be submitted with the Construction Certificate application, in accordance with Part 9 Clause 168 of the Environmental Planning and Assessment Regulation 2000.

Note: A Construction Certificate cannot be issued until a Fire Safety Schedule is received.

Reason: Compliance with the Environmental Planning and Assessment Act 1979.

### 8 (2MS01)

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,
- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

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

9 (2WM02)

A Waste Management Plan is to be submitted with the application prior to a Construction Certificate being issued in accordance with the Manly Development Control Plan 2013.

The plan should detail the type and estimate the amount of demolition and construction waste and nominate how these materials will be sorted and dealt with. Weight dockets and receipts must be kept as evidence of approved methods of disposal and recycling. All demolition and excess construction materials are to be recycled where ever practicable. It should include consideration of the facilities required for the ongoing operation of the premises' recycling and waste management services after occupation. A template is available from the Manly Council website.

Reason: To plan for waste minimisation, recycling of building waste and on-going waste management.

10 (2WM04)

The building must include not less than two independently designated areas or garbage rooms for commercial and for residential occupants; to keep commercial waste and recycling separate to residential waste and recycling.

Reason: To ensure the appropriate separation and collection of waste generated by commercial and residential activities.

**CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT**

11 (3CD01)

Building work, demolition or excavation must not be carried out until a Construction Certificate has been issued.

Reason: To ensure compliance with statutory provisions.

12 (3CD04)

The hoarding be in place prior to the commencement of works on the site. Trees which are affected by the hoarding and located outside the boundaries of the allotment are not to be cut, trimmed or removed without the prior approval of Council. The hoarding be removed immediately at the applicant's expense, if any of these conditions relating to hoardings are not fully complied with.

Reason: To ensure public safety and amenity on public land.

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

13 (4CD01)

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.

- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) All waste must be contained entirely within the site.
- 11) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 12) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 13) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 14) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 15) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 16) Building operations such as brick-cutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 17) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.
- 18) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

#### 14 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday (including works undertaken by external contractors). No site works can be undertaken on Sundays or public holidays.

Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

#### 15 (4CD04)

All hoardings must be lit between the hours of sunset and sunrise. Lights are to be erected at intervals of not greater than 5.0 metres for the length of the hoarding. The applicant must keep the hoarding presentable to the public for the whole of the time it is erected. There must be no catch points or protrusions likely to cause injury or damage to the public from the hoarding. The hoarding must be constructed of demountable timber frame sections lined with a smooth face material, and painted with an approved white paint which will not wash or rub off.

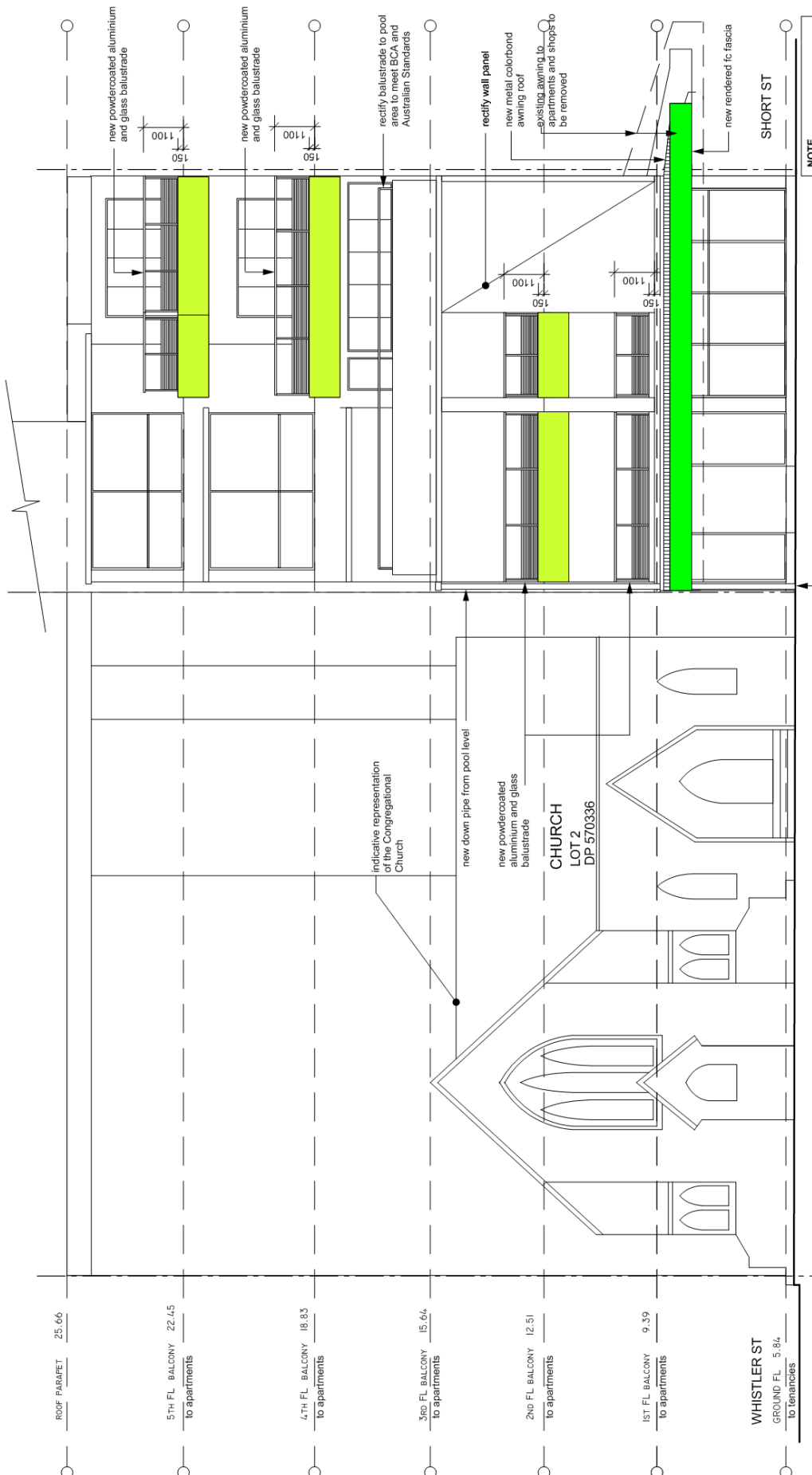
Reason: To ensure public safety and amenity on public land.

**ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR  
DEVELOPMENT**

16 (6MS02)

No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

Reason: Statutory requirement, Environmental Planning and Assessment Act 1979.



**SOUTH BALCONY ELEVATION Proposed**

Scale 1:100

NOTE  
downpipe locations are  
indicative, to be verified on site

25/09/14	B	pre-lodgement discussion
24/06/14	A	DA draft for comment
17/09/13	-	preliminary draft for comment
Date:	Design:	Scale:
AUG 2013	MK	1:100
Job No:	Drawing No:	Rev:
100702	A 08 B	

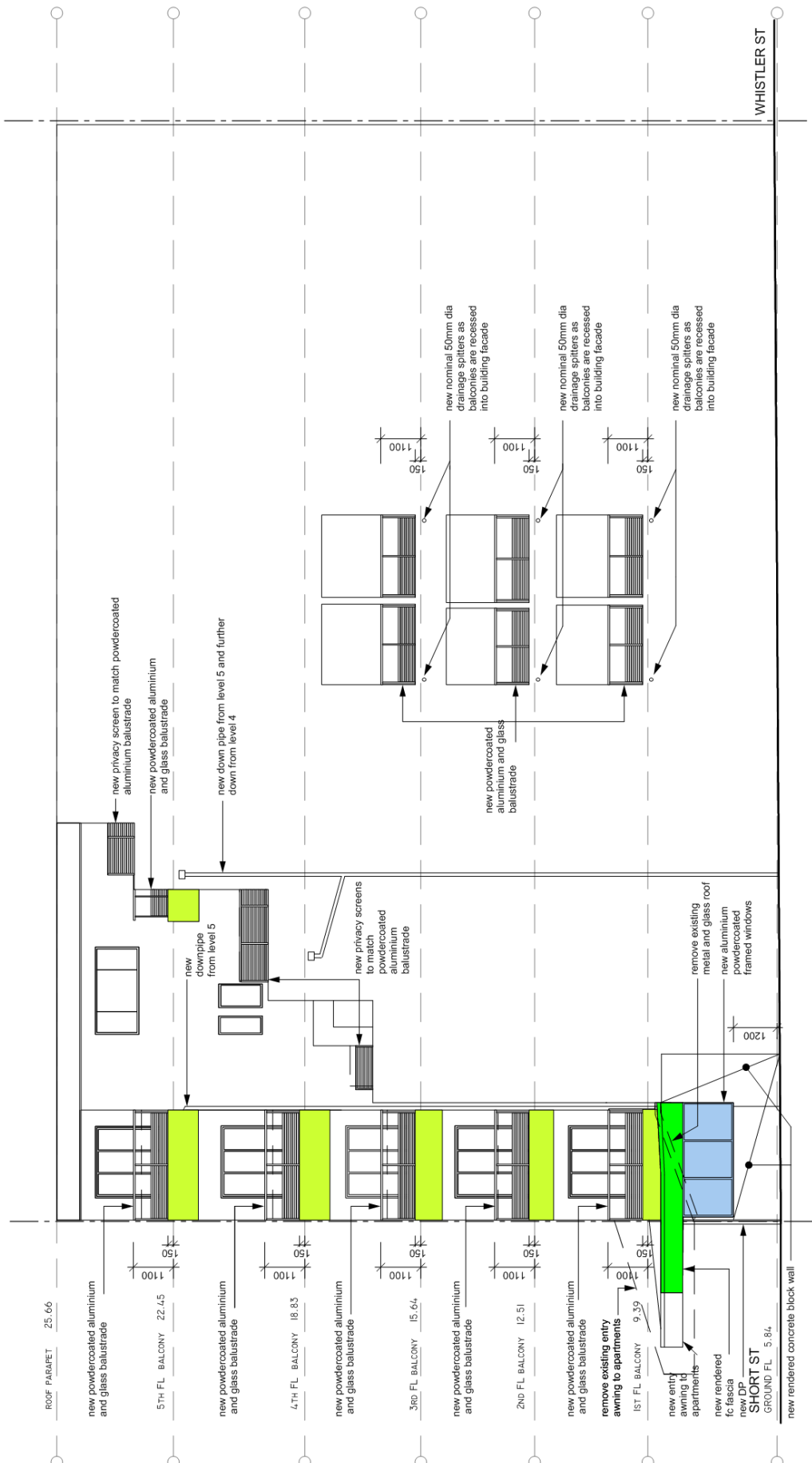
new fc rendered fascia to new metal awning system and fc panels to facade height of bulkhead to remain constant throughout eastern and southern elevations	remove existing bulkhead and replace with new fc rendered bulkhead, also where noted, to cover stormwater pipes. External soffit levels are to be maintained.
<b>Key</b>	

Project:	REMEDIAL WORKS
in:	'WATERSIDE APARTMENTS'
48-52 SYDNEY RD, MANLY LOT 12 D.P. 836172	
for:	THE OWNERS CORPORATION SP 45730

Consulting	Structural, Civil, Stormwater
PO Box: 703	ABN 58 652 578 841
DEE WHY NSW 2099	Phone: (02) 9597 1817
Fax: (02) 9597 1817	e-mail: info@mtkconsulting.com.au

A3 NOTES	1. The Architectural drawings have been adapted from and should be read in conjunction with DP SURVEYING Survey Plan dated 06/08/13 Ref:2520.
	2. All dimensions to be verified on site by builder before commencing work.
	3. New balcony balustrades to conform to BCA standards
	4. As new work is only applicable to the balconies and facade, internal areas are not shown. Existing sizes and location to doors and windows are approximate.





# NORTH BALCONY ELEVATION Proposed

Scale 1:100

Key

new powdercoated aluminium frame and glass doors and windows to ground floor

remove existing bulkhead and replace with new fc rendered bulkhead, also where noted, to cover stormwater pipes. External soffit levels are to be maintained.

new fc rendered fascia to new metal awning system and fc panels to facade. Height of bulkhead to remain constant throughout eastern and southern elevations

Date	Rev	Issue
25/09/14	B	pre-bidgement discussion
24/06/14	A	DA draft for comment
17/09/13	-	preliminary draft for comment

Date:	Design:	Drawn:	Scale:
AUG 2013	MK	FK	1:100
Job No:	Drawing No:		
100702	A07 B		
	Rev:		

**NORTH ELEVATION**  
**Proposed**

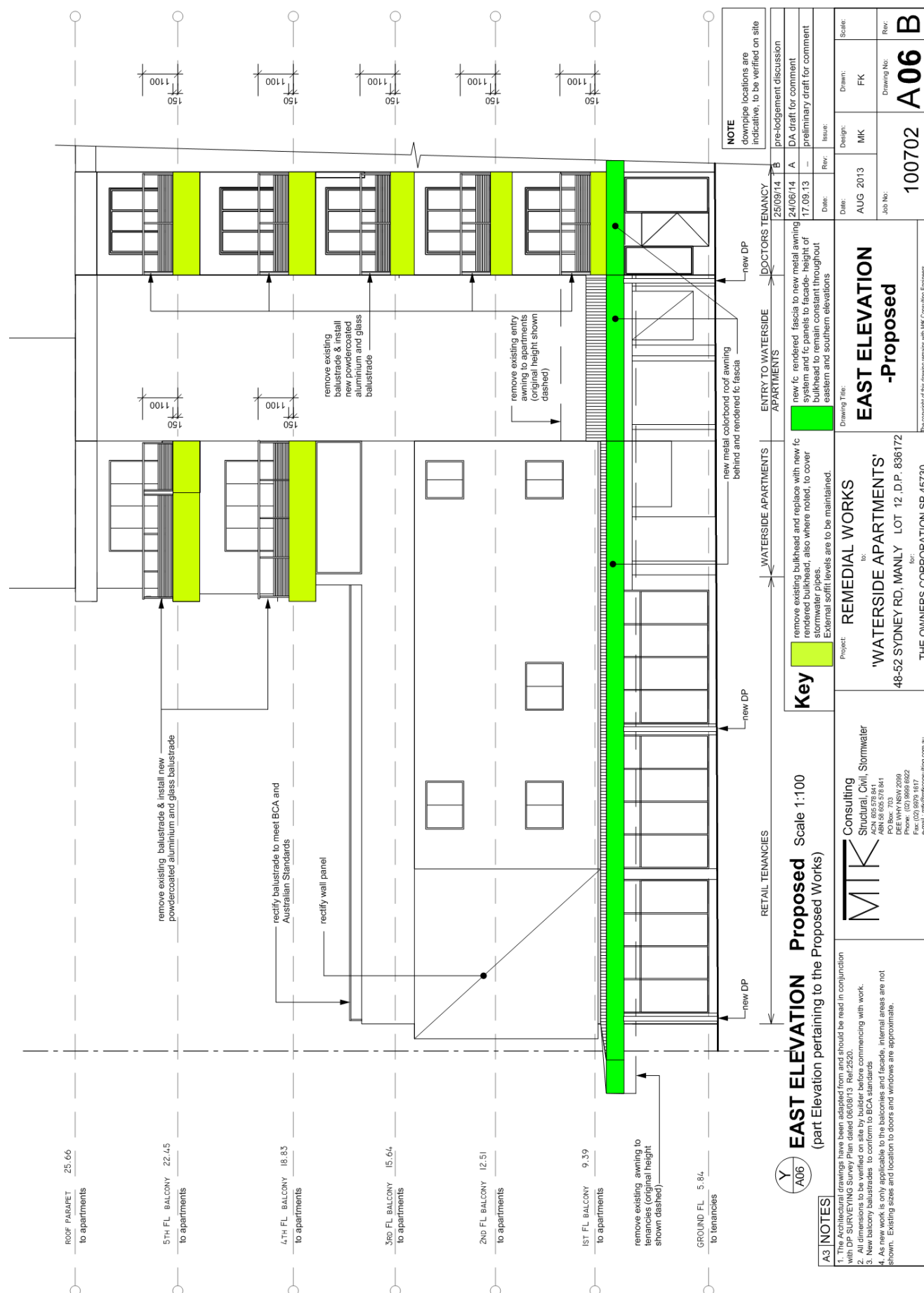
Project: REMEDIAL WORKS  
in 'WATERSIDE APARTMENTS'  
48-52 SYDNEY RD, MANLY LOT 12 D.P. 836172  
for: THE OWNERS CORPORATION SP 45730

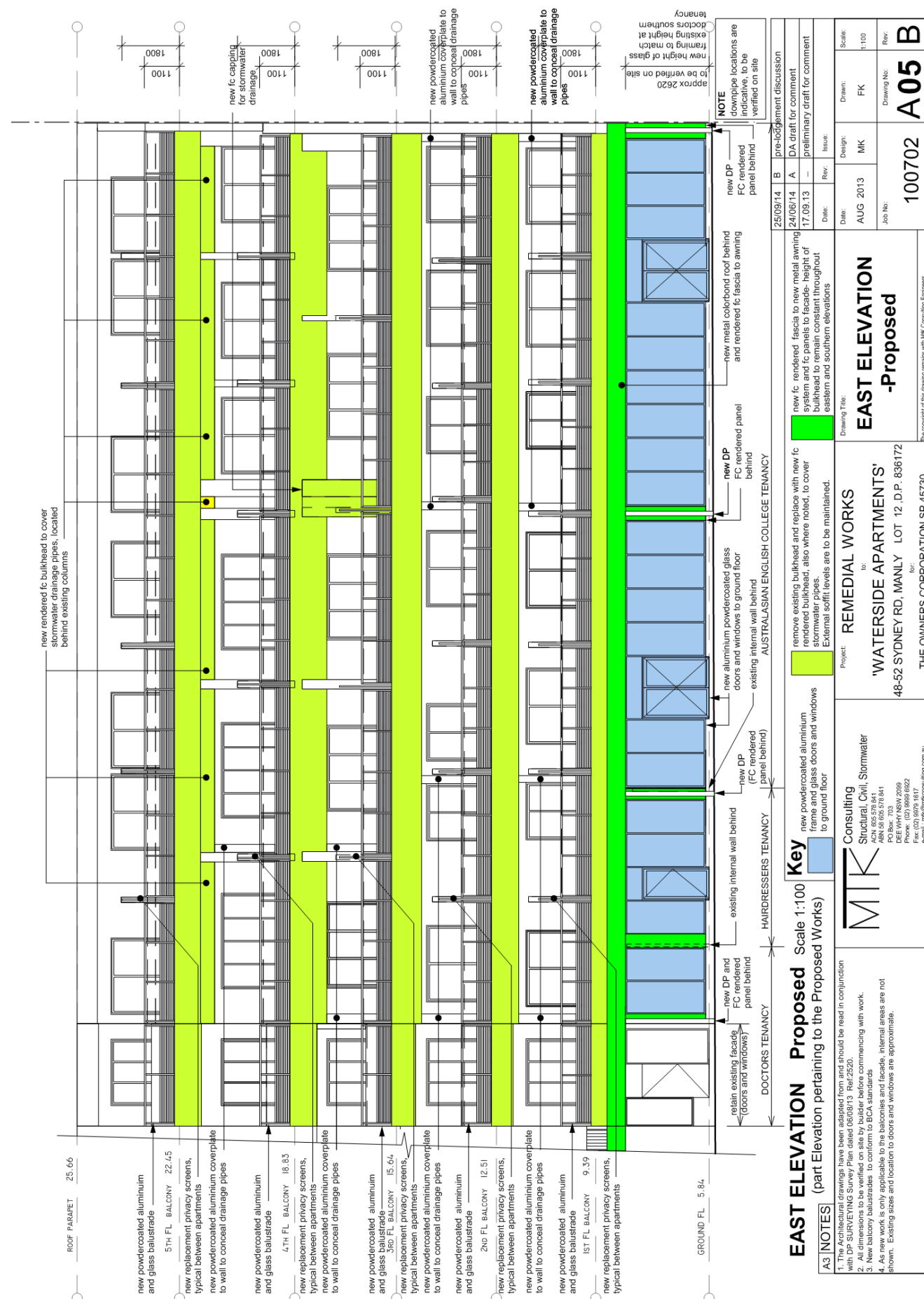
Consulting  
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PO Box 703  
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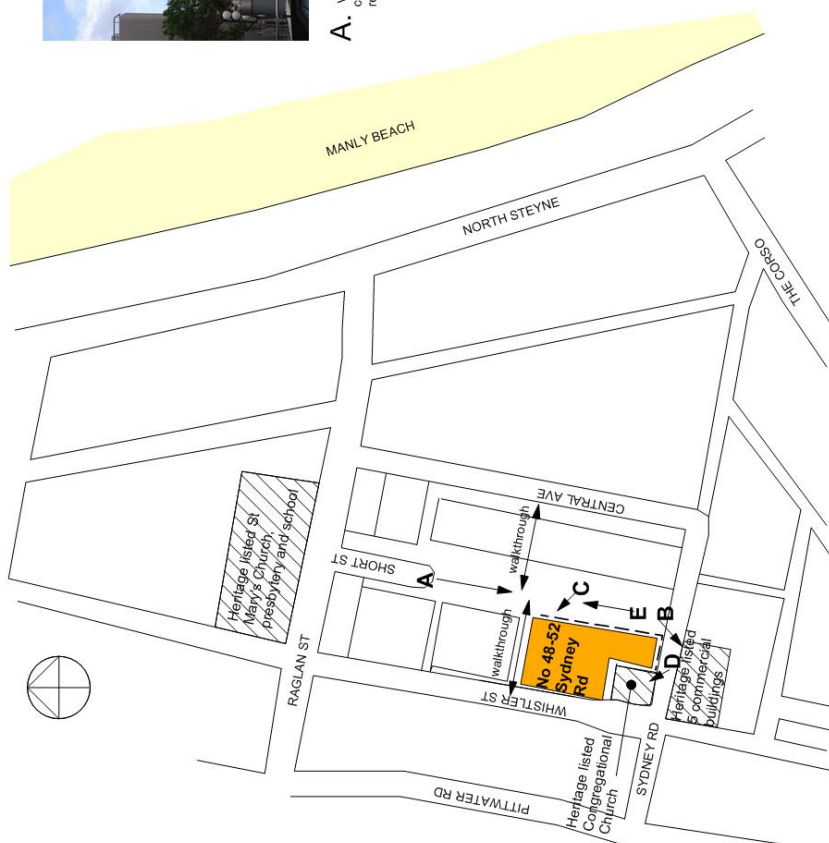
**NOTE**  
downpipe locations are indicative, to be verified on site

**A3 NOTES**  
1. The Architectural drawings have been adapted from and should be read in conjunction with DP SURVEYING Survey Plan dated 06/08/13. Ref: 2520.  
2. All dimensions to be verified on site by builder before commencing work.  
3. New balcony balustrades to conform to BCA standards.  
4. As new work is only applicable to the balconies and facade, internal areas are not shown. Existing sizes and location to doors and windows are approximate.









## LOCALITY AND SITE ANALYSIS SKETCH

Approx Scale 1:500 (Note areas are only approximate)

**Key-** — — — replacement awning

subject site known as "Waterside Apartments"

### Proposed Colour Scheme

Replacement awning (roof and fascia): Walls/columns to ground floor tenancies Replacement balustrades, external walls predominantly a cream/off white colour.

7. The Architectural drawings have been adapted from and should be read in conjunction with the DP SURVEYING Survey Plan dated 06/08/13. Ref/2520.

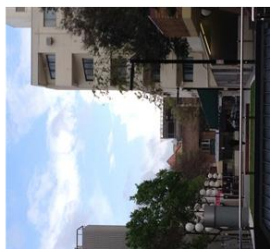
**WIK**  
Consulting  
Structural, Civil, Stormwater  
ACN 605 578 841  
ABN 58 605 578 841  
PO Box 703  
DEE WHY NSW 2059  
Phone: (02) 9669 5522  
Fax: (02) 9979 1617  
e-mail: [mik@wikconsulting.com.au](mailto:mik@wikconsulting.com.au)

Project: **REMEDIAL WORKS**  
to:  
**"WATERSIDE APARTMENTS"**  
438-52 SYDNEY RD, MANLY LOT 12, D.P. 836172  
to:  
THE OWNERS CORPORATION SP 45730

Drawing Title:  
**CONTEXT,  
LOCALITY AND SITE  
ANALYSIS**

the copyright of this drawing remains with MTK Consulting Engineers

25/09/14	B	pre-lodgement discussion
24/06/14	A	DA draft for comment
17.09.13	—	preliminary draft for comment
Date:	Rev:	Issue:
Date:	Design:	Drawn:
AUG 2013	MK	FK
Job No:	Drawing No:	Rev:
100702	A00	B



A. View south along Short St to commercial shops and residences on Sydnev Rd



**B.** View of heritage listed buildings on the corner of Sydnev Rd



Proposed remedial work to the facade and roof of the commercial tenancies on Short St.



D. Heritage listed Congregational Church adjacent to proposed remedial work to the building on the Sydney Rd elevation.



**E.** View north to heritage listed St Marys Church, Presbytery and School. Note: dilapidated awnings to be included in the proposed remedial works.

## CONTEXT PHOTOGRAPHS

(NOTE - larger A4 colour photographs included in submission)

**ITEM 3.4**

**79A LAUDERDALE AVENUE, MANLY - ALTERATIONS AND ADDITIONS TO THE EXISTING BUILDING AND USE AS A DUAL OCCUPANCY (ATTACHED) AND STRATA SUBDIVISION**

**REPORTING OFFICER****TRIM FILE REF****2017/317902****ATTACHMENTS**

- 1** [↓](#) **Assessment Report**
- 2** [↓](#) **Site and Elevation Plans**

**PURPOSE**

To refer the attached application for determination by the discretion of the Executive Manager Development Assessment

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**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

That Development Application No. 326/2016 for Alterations and additions to the existing building and use as a dual occupancy (attached) and strata subdivision at 79A Lauderdale Avenue be approved subject to the conditions outlined in the report.

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## Development Assessment Report

2017/221083

<b>DA No.</b>	326/2016
<b>Site Address</b>	79A Lauderdale Avenue, Manly; Lot 11 DP 867302
<b>Proposal</b>	Alterations and additions to the existing building and use as a dual occupancy (attached) and strata subdivision.
<b>Officer</b>	Tom Prosser

### **SUMMARY:**

**Application Lodged:** 25/11/2016 (amended plans were received on 15/06/2017)

**Applicant:** Jon Adams  
**Owner:** Stepping Stone P/L

**Estimated Cost:** \$1,200,00.00  
**Zoning:** MLEP, 2013 – R1 General Residential  
**Heritage:** In vicinity to the south of the site- I49  
**NSW LEC:** Not applicable.

**Notification:** 29 November 2016 to 15 December 2016.  
**Re-notification:** 19 June 2017 to 5 July 2017

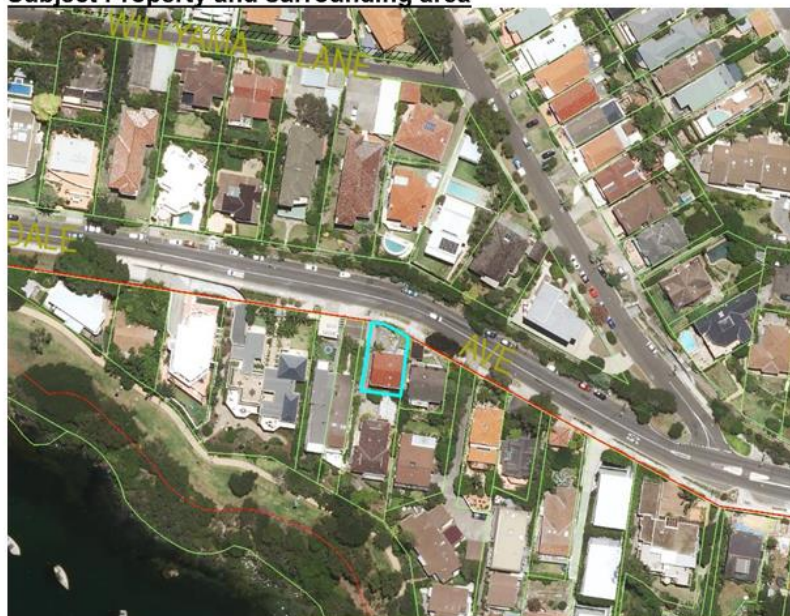
**Submissions received:** 4 (amended application). It is noted that there were 5 objections and 1 was withdrawn.

**Site Inspected:** 3 March 2017 and various site visits to assess views

**LEP (4.6) Variations proposed:** Height, FSR.  
**DCP Variations proposed:** Wall height, number of Storeys, setbacks, fence height

**Recommendation:** Approval

### **Subject Property and surrounding area**



The subject property is commonly known as 79A Lauderdale Avenue and legally known as Lot 11 in DP 867302. The site is located on the southern side of Lauderdale Avenue. The property is an irregular in shape and has a frontage of 13.24m to Lauderdale Avenue, an average depth of 20m and an overall site area of 264.8m<sup>2</sup>. The property currently contains a 2 & 3 storey building with vehicular access via two existing driveways from Lauderdale Avenue to a hard stand space above a garage area to the front of the existing building. The property slopes from the front at Lauderdale Avenue to the rear and includes a crossfall of approximately 5 metres. The land further slopes to the rear at the adjoining battle-axe property toward the harbour foreshore.

The area is characterised by sloping land down to the harbour foreshore which has residential development on both sides of Lauderdale Avenue. This provides a situation in which dwellings on the northern side of Lauderdale Avenue are at a higher level of topography and often have water views over and around the dwellings on the southern side of the street.

**Property Burdens and Constraints**

A sewerline intersects the property at the rear of the property. There is also an easement for carriageway which services the subject site and the adjoining battle-axe allotment.

**Site History/Background**

None applicable.

**Description of proposed development**

The existing building fits the definition of a Residential flat building under the Manly LEP, 2013 as there are three separate levels and each are capable of being occupied or used as a separate domicile. The top level does not have access at ground level and as so does not meet the definition for multi-dwelling housing which requires access for each dwelling at ground level. The proposal is for alterations and additions which provides an extra floor but a reduction in the "suite of rooms" capable of being occupied as a separate domicile, from three to two dwellings. This results in the proposed development fitting the definition for "dual occupancy" under the Manly LEP, 2013.

The proposed dual occupancy involves the addition of a floor and addition of stairs to provide two 2 storey dwellings. It is also proposed that the dwellings be strata subdivided. The proposal provides a new double carport at first floor level and alterations at the existing garage ground floor level to provide two car parking spaces. A summary of the additions for each dwelling and externally follows:

**Unit 1 (bottom two floors)**

- 4 bedrooms
- Ensuite
- Bathroom
- Laundry
- Study
- Dining area
- 2 living areas
- Staircase
- Toilet
- Courtyard

**Unit 2 (top two floors)**

- 3 bedrooms
- Living
- Dining
- Kitchen
- Laundry
- Study with ensuite
- Bathroom



- Balcony at lower level
- Deck at upper level

External

- Bin storage area
- Paving surrounding garage
- Planter boxes
- Double carport
- Front fence
- Strata subdivision.

Amended plans were received on the 15<sup>th</sup> of June 2017 and re-notified from the 19<sup>th</sup> of June 2017 and the 5<sup>th</sup> of July 2017. These plans included a change in design to the top floor, being setback a further metre from the eastern boundary than the original proposal.

Further amended plans were received on the 10<sup>th</sup> of August 2017 which included the addition of a planter box to the rear deck. These plans were not re-notified due to the minimal impact of the proposed planter box.

It is noted that the original proposal and amended plans were notified as, "alterations and additions to an existing Residential Flat Building." The description of the proposal was changed to give a clearer indication of the proposed works which included a reduction in density from three to two dwellings. This description is "alterations and additions to the existing building and use as a dual occupancy (attached) and strata subdivision."

**Internal Referrals**

**Engineering Comments**

Council's Engineer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

**Building Comments**

Council's Building Surveyor offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

**Landscaping Comments**

The Council's Landscape Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

**Waste Comments**

Council's Waste Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

**Traffic Comments**

Council's Traffic Engineer provided the following comment on the proposal:

*"I note that Lauderdale Ave has no parking permitted on the development's side of the road as such constructing the development will be problematic. Any Work Zone or Stand Plant applications would need to be supported by a Construction Traffic Management Plan and would require temporary relocation of Bus Stop."*

*"The only concern I have in regard the additional information provided by the applicant in response to the concerns raised by No. 79B is with regard to the width of the proposed steps which at a minimum of 730mm will be very narrow. The available width of the steps is however constrained by the width of driveway adjacent which appears to be less than 3.0m in width. Additional details should therefore be provided."*

*I'd suggest that the following special conditions be added to any approval*

1. *That a Construction traffic management plan (CTMP) be submitted for approval prior to release of construction certificate outlining a) how the development will be constructed, b) what truck movements are anticipated to and from the site and at what stage of the project and c) outlining any traffic control measures that will be required to facilitate construction noting that No Parking and Bus Zone restrictions currently exist in the vicinity on the frontage of the site. The CTMP to also outline how pedestrian and vehicular access will be maintained to 79b Lauderdale Avenue throughout all stages of the project and to clearly outline any points within the construction schedule when vehicular access will be impacted. The CTMP to be prepared in liaison with the owners of 79b Lauderdale Avenue and submitted for approval prior to commencement.*
2. *That additional plans be prepared and submitted for approval prior to construction of the driveway showing how the sandstone steps adjacent to the driveway will be reconstructed and indicating the proposed width of the steps and the remaining width of driveway adjacent to those steps. The new steps and any related driveway adjustments to be completed at the applicant's cost*
3. *That any adjustment to the steps or the common driveway serving 79a and 79b Lauderdale Avenue required as a result of this development be completed at full cost to the applicant."*

Assessing officer comment

Suitable conditions have been imposed.

**Driveway Comments**

Council's Driveway Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

**Planning Comments**

**Environmental Planning & Assessment Act 1979 – Section 79(C)(1)**

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:**  
**(i) any environmental planning instrument, and**

**Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005:**

The subject property is located within the Foreshores and Waterways Area therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) / 2(2) (aims of the SREP), Clause 13 / 14 (nominated planning principles), Clause 21 (relating to biodiversity, ecology and environmental protection), Clause 22 (relating to public access to and use of foreshores and waterways), Clause 23 (relating to maintenance of a working harbour), Clause 25 (relating to foreshore and waterways scenic quality) and Clause 26 (relating to maintenance, protection and enhancement of views) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

**Manly Local Environmental Plan 2013**

The subject site is located in Zone R1 General Residential under the Manly LEP 2013. The proposed development is a dual occupancy and permissible in the within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

## **Zone R1 General Residential**

### **Objectives of zone**

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

The proposal for a dual occupancy contributes to housing needs of the community with two dwellings proposed on site.

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

The proposal provides a four level dual occupancy which would contribute to providing a variety of housing types and densities to the community.

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

Not applicable.

### **Part 4 Principal development standards**

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

<b>4.</b>	<b>Principal Development Standards</b>	<b>Requirement</b>	<b>Existing</b>	<b>Proposed</b>	<b>Complies Yes/No</b>	<b>Comments</b>
4.1	Minimum subdivision lot size	300m <sup>2</sup>	264.8m <sup>2</sup> (Not strata subdivided)	Strata Subdivision (Pt 1: 349 m <sup>2</sup> Pt 2: 213 m <sup>2</sup> )	No.	See comments.
4.3	Height of buildings	8.5m	10m	10.7m	No.	See comments.
4.4	Floor Space Ratio Site area: 264.8m <sup>2</sup>	0.5:1 132.4m <sup>2</sup>	0.87:1- 230m <sup>2</sup>	0.96:1 255m <sup>2</sup>	No.	See comments.

### **4.6 Exceptions to development standards**

#### Height of building

The following assessment of the variation to Clause 4.3 – Height of buildings development standard and is assessed taking into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement	8.5m
Proposed	10.7m (existing 10m)
Is the planning control in question a development standard?	Yes.
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical.
If numerical enter a % variation to requirement	25.8% (7% variation on existing)

The proposal must satisfy the objectives of Clause 4.3 – Height of buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

#### **Is the planning control in question a development standard?**

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the MLEP 2013 is a development standard.

**What are the underlying objectives of the development standard?**

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MELP 2013 are:

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

- a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Comment:

The proposed height and building form is consistent with the topographic landscape, prevailing building height and desired future character. In particular, the slope of the site along with the prevailing building height of development to the east provides a situation in which the proposed building would achieve the characteristics desirable for the future streetscape. The recessive nature of the top floor from the front of the street which includes a sloped, roof style at the frontage also provides a feature which allows the presentation of the building height be consistent with the desired streetscape.

- b) *to control the bulk and scale of buildings,*

Comment:

The subject site has topography which involves a slope both from front to rear as well as east to west. This provides a situation in which the presentation of bulk and scale is varied across the site. The proposed bulk appears to be greatest at the rear of the proposed development due to the slope. This is a reasonable outcome in terms of presentation of bulk and scale to the streetscape. In addition, the proposed main building at the front eastern corner of the site recedes below the level of the carport. This carport is at ground level of the street and due to its open nature provides a reasonable control of bulk and scale. The slope in combination with a design that allows the building to be recessive in the streetscape, provides a reasonable situation in terms of controlling bulk and scale.

- c) *to minimise disruption to the following:*
  - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
  - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
  - (iii) *views between public spaces (including the harbour and foreshores),*

Comment:

The proposed height non-compliance leads to the obstruction of a partial land-water interface view from ground level of dwellings opposite the subject site. As a result of the extensive water views available beyond the subject site, the loss of this view caused by the height non-compliance is proportionately minor. The proposed development provides a reasonable outcome in terms of view sharing as the top floor allows for views from private open space of the subject site whilst maintaining and protecting extensive water views for the dwellings opposite. Additionally, land and water interface views are maintained, despite the height non-compliance. Full land and water interface views will be maintained for living rooms above ground level whilst the height non-compliance will only have a minor impact on the land-water interface at ground level due to the retention of view corridors either side of the proposed development. This is further discussed in the section of this report relating to the Manly DCP, having regard to the View Loss principle established by the NSW Land and Environment Court.

- d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Comment:

The proposed top floor is setback from the lower floor and as a result has no unreasonable impact in regards to solar access. The physical separation that the driveway to the west provides and the lack of significant impact to any living room windows at 77 Lauderdale Avenue allows for sufficient provision of sunlight for neighbouring dwellings.



- e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Comment:  
Not applicable.

**What are the underlying objectives of the zone?**

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R1 General Residential zone.

The underlying objectives of Zone R1 General Residential zone are:

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

Comment:

The proposal is for a dual occupancy which reduces the density (number of dwelling on site) from 3 to 2. This reduction in density is a reasonable contribution to the housing needs of the community due to the associated reduction in planning and environmental impact, such as reduced need for car parking. This also contributes to providing a variety of housing types and densities in the area.

**Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?**

- (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.*

Comment:

Given the lack of unreasonable impact and the facilitation of appropriate view sharing, flexibility in applying the height development standard is warranted in this circumstance.

- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Comment:

The proposal provides a refurbished development that reduces density in terms of number of dwellings and improves the usability of, and views obtained from, the private open space. This reduction in impact of dwelling density and improvement in amenity of private open space combine with the lack of unreasonable impact to surrounding dwellings in providing a better outcome in this circumstance.

- (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.*

Comment:

Compliance with the development standard for height is unreasonable in this circumstance due to the lack of unreasonable impact to surrounding development and the reasonable visual impact that comes as a result of the alterations and additions. The topographical nature of the site, narrow allotment and physical separation provided by the battle-axe driveway to the west contribute to providing a lack of unreasonable impact. The lack of unreasonable impact contributed to by these site features along with the positive outcome in development provide sufficient 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*

Comment:

A written request has been provided that gives sufficient reasoning as to why the compliance with the development standard is both unreasonable and unnecessary and that there are sufficient grounds to justify contravening the standard. This includes the following reasoning:

- *The contravention in building height is minimal and to the rear of the property.*
  - *The existing building contravenes the control.*
  - *The height would increase only a portion of the roof and the majority of the roof falls toward the street.*
  - *Some parts of the roof are significantly lower than existing.*
  - *The height non-compliance would have minimal effect on overall building envelope and surrounding environment.*
  - *View corridors would be further increased to the east and west ends of the proposed roof*
- (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:

The proposal is consistent with both the objectives of the standard and objectives of the zone which allows it to be in the public interest. In particular, the reduction of dwelling density and no unreasonable amenity or visual impact is in the public interest in this circumstance.

For reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone in the MLEP 2013.

- (b) *the concurrence of the Director-General has been obtained*

Comment:

Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of Buildings Development Standard is assumed.



Floor Space ratio

The following assessment of the variation to Clause 4.4 – Floor space ratio development standard and is assessed taking into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement	0.5:1 (132.4m <sup>2</sup> )
Proposed	0.96:1 (255m <sup>2</sup> )  Existing: 0.87:1 (230m <sup>2</sup> )
Is the planning control in question a development standard?	Yes.
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical.
If numerical enter a % variation to requirement	92.6% (10.9% variation on existing)

The proposal must satisfy the objectives of Clause 4.4 – Floor space ratio, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

**Is the planning control in question a development standard?**

The prescribed Height of buildings limitation pursuant to Clause 4.4 – Floor space ratio of the MLEP 2013 is a development standard.

**What are the underlying objectives of the development standard?**

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

(2) 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 slope of the site provides a situation in which the presentation of bulk and scale in the street is minimised. This is a result of the floor space and resulting bulk of the development being recessed toward the rear of the site in terms of visual presentation to the street. This is further discussed in the section in this report under the Manly DCP relating to Streetscapes.

- (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 narrow allotment and setback of the top floor from lower floors provides a situation in which the proposed development does not unreasonably obscure views and retains view corridors each side of the proposed development.

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

Comment:

The proposed development is of a similar bulk and scale to the existing building. Along with slope which allows the development to be recessive from the street, this provides a proposal that has an appropriate visual relationship with the existing street.

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

Comment:

The proposal does not involve any privacy impacts or impacts on solar access as a result of the proposed alterations and additions that would unreasonably constrain the enjoyment in use of adjacent land. This is a result of the well-modulated top floor that is setback from the lower levels and the slope of the land that reduces impact relating to bulk.

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

Comment:

Not applicable.

#### **What are the underlying objectives of the zone?**

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R1 General Residential zone.

The underlying objectives of Zone R1 General Residential zone are:

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

Comment:

Compliance with the development standard for Floor space ratio is unreasonable in this circumstance due to the lack of unreasonable impact to surrounding development and the reasonable visual impact that comes as a result of the alterations and additions. The topographical nature of the site, narrow allotment and physical separation provided by the battle-axe driveway to the west contribute to providing a lack of unreasonable impact. This lack of unreasonable impact is a sufficient planning ground to justify contravening the development standard.

#### **Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?**

- (2) The objectives of this clause are as follows:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development.*

Comment:

The slope of the land provides a circumstance in which the impact of the bulk (including on amenity and visual) is sufficiently minimised. As such, flexibility in applying the floor space ratio development standard is warranted in this circumstance.

- (c) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Comment:

The proposal provides a refurbished development that reduces density in terms of number of dwellings and improves the usability of, and views obtained from, the private open space. This reduction in impact of dwelling density and improvement in amenity of private open space combine with the lack of unreasonable impact to surrounding dwellings in providing a better outcome in this circumstance.

- (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.*

Comment:

Compliance with the development standard for floor space ratio is unreasonable in this circumstance due to the lack of unreasonable impact to surrounding development and the reasonable visual impact that comes as a result of the alterations and additions. The topographical nature of the site, narrow allotment and physical separation provided by the battle-axe driveway to the west contribute minimising the impact of the proposed bulk. This lack of unreasonable impact along with the appropriate outcome in development provide sufficient 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:*
    - (iii) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

Comment:

A written request has been provided that gives sufficient reasoning as to why the compliance with the development standard is both unreasonable and unnecessary and that there are sufficient grounds to justify contravening the standard. This includes the following reasoning:

- *The existing building contravenes the control.*
- *"The additional FSR would increase the density whilst having a minimal effect on the overall building envelope, and would improve some view corridors for some neighbours."*
- (iv) *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:

The proposal is consistent with both the objectives of the standard and objectives of the zone which allows it to be in the public interest. In particular, the reduction of dwelling density and no unreasonable amenity or visual impact is in the public interest in this circumstance.

For reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone in the MLEP 2013.

- (b) *the concurrence of the Director-General has been obtained*

Comment:

Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Floor Space Ratio Development Standard is assumed.

Minimum subdivision lot size

The following assessment of the variation to Clause 4.1 – Minimum subdivision lot size and is assessed taking into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement	300m <sup>2</sup> (for any lot)
Proposed	Pt: 2 is 213m <sup>2</sup>
Is the planning control in question a development standard?	Yes.
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical.
If numerical enter a % variation to requirement	29%

The proposal must satisfy the objectives of Clause 4.1 – Minimum subdivision lot size, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

**Is the planning control in question a development standard?**

The prescribed Height of buildings limitation pursuant to Clause 4.1 – Minimum lot size of the MLEP 2013 is a development standard.

**What are the underlying objectives of the development standard?**

The underlying objectives of the standard, pursuant to Clause 4.1 – Minimum lot size of the MELP 2013 are:

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

- (a) *to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping,*

Comment:

The overall size of the lot (Torrens title) remains as existing with the proposal to create two new strata lots. As the creation of the two lots does not have any impact on the overall area of the site, the proposed subdivision would not result in a situation in which there was less usable area for building or landscaping.

- (b) *to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns,*

Comment:

The strata subdivision does not change the character of the streetscape and does not have an impact on subdivision patterns in the street.

- (c) *to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,*

Comment:

The proposed strata subdivision does not have an impact on the overall size of the lot (Torrens title). The proposed strata subdivision reduces the size of the lots to form a strata scheme. However, this has not unreasonable impact on the above factors.

- (d) *to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.*

Comment:

The proposed strata subdivision of the lots provides the same opportunity for the use of infrastructure, public transport and pedestrian access as a dual occupancy would. As a result, the smaller strata lots would not reduce the use of the above.



**What are the underlying objectives of the zone?**

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R1 General Residential zone.

The underlying objectives of Zone R1 General Residential zone are:

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

Comment:

Compliance with the development standard for minimum lot size is unreasonable in this circumstance due to the lack of unreasonable impact to surrounding development and the reasonable visual impact that comes as a result of the alterations and additions associated with the strata subdivision. The topographical nature of the site, narrow allotment and physical separation provided by the battle-axe driveway to the west contribute to providing a lack of unreasonable impact. This lack of unreasonable impact is a sufficient planning ground to justify contravening the development standard.

**Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?**

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

- (b) *to provide an appropriate degree of flexibility in applying certain development standards to particular development.*

Comment:

In this circumstance, an appropriate degree of flexibility is reasonable given the lack of change in impact the strata subdivision would have as compared to a dual occupancy on one lot which would be compliant with the clause and permissible in the zone.

- (d) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Comment:

The proposal would provide a strata scheme for the subject site which would have no impact on the building bulk or dwelling density. A dual occupancy of the same design would be compliant with this clause and permissible in the zone. As such, flexibility is warranted in this circumstance.

(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:

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

Comment:

Compliance with the development standard for minimum lot size is unreasonable in this circumstance due to the lack of unreasonable impact to surrounding development and the lack of change to visual impact that comes from the strata subdivision. This lack of unreasonable impact along with the appropriate outcome in development provide sufficient planning grounds to justify contravening the development standard.



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

(b) *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*

Comment:

A written request has been provided that gives sufficient reasoning as to why the compliance with the development standard is both unreasonable and unnecessary and that there are sufficient grounds to justify contravening the standard. This includes the following reasoning:

- The existing building contravenes the control.
- The proposal seeks to convert three dwellings into one (reduction in impact).
- The proposed development will enhance the local environment, increase off street parking to the site and would not have a detrimental impact on neighbours or the local environment.

- (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:

The proposal is consistent with both the objectives of the standard and objectives of the zone which allows it to be in the public interest. In particular, the reduction of dwelling density and no unreasonable amenity or visual impact is in the public interest in this circumstance.

For reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone in the MLEP 2013.

- (c) *the concurrence of the Director-General has been obtained*

Comment:

Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Floor Space Ratio Development Standard is assumed.

## **Part 5 Miscellaneous Provisions**

The relevant provisions of the Manly LEP 2013 are referred to below as part of this assessment:

<b>5.</b>	<b>Miscellaneous Provisions</b>	<b>Applies</b>	<b>Complies</b>	<b>Comments</b>
5.9	Preservation of trees or vegetation	Yes	Yes	Council's Landscape officer provided no objection to the proposal subject to conditions. The additions of landscaping to the courtyard at the rear and planter boxes at the front of the building contribute to preserving amenity of the area.
5.10	Heritage Conservation	Yes	Yes	The subject site is within the vicinity of item 149, "Esplanade Park and Fairlight Pool". The proposed extensions would not detract the significance of this item.

### Part 6 Local Provisions

The relevant provisions of the Manly LEP 2013 are referred to below as part of this assessment:

6.	Local Provisions	Applies	Complies	Comments
6.1	Acid Sulphate Soils	Yes	Yes	The proposal is located in land identified Class 5 for Acid Sulfate soils. The proposed excavation would not be below 5 metres Australian Height Datum.
6.2	Earthworks	Yes	Yes	Complies.
6.3	Flood Planning	No	N/A	
6.4	Stormwater Management	Yes	Yes	Subject to conditions.
6.5	Terrestrial Biodiversity	No	N/A	
6.6	Riparian land and watercourses	No	N/A	
6.7	Wetlands	No	N/A	
6.8	Landslide Risk	No	N/A	
6.9	Foreshore Scenic Protection Area	Yes	Yes	The subject site is located in the Foreshore Scenic Protection Area under the Manly LEP, 2013. As outlined below, the proposed development reasonably protects aesthetic amenity and views to and from Sydney Harbour contributed to by the side setbacks of the top floor on a narrow and sloped site.
6.12	Essential services	Yes	Yes	Existing and subject to conditions.

**79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and**

There is no applicable Draft Planning Instrument.

**79C(1)(a)(iii) - any development control plan, and**

### Manly Development Control Plan 2013

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards, an assessment is included in the Planning Comments.

### Part 3 General Principles of Development

Issues	Consistent with Principle	Inconsistent with Principle
Streetscape	✓ See comment.	
Heritage – In Vicinity	✓	
Landscaping Design	✓	
Landscape/Tree Preservation	✓	
Sunlight Access and Overshadowing	✓	
Privacy and Security	✓ See comment	
Maintenance of Views	✓ See comment.	

**Comment:**

**3.1 Streetscapes**

Streetscape

The proposal is consistent with the objectives of Clause 3.1 of the Manly DCP as follows:

*Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.*

The proposal includes a front fence and a carport at street level. These features of the development reasonably minimise visual impact on the streetscape through modulation of the proposed bulk and a consistency with development in the street. The proposed carport is an open structure and the proposed fence is partially transparent to achieve this minimisation in bulk and visual impact.

*Objective 2) To ensure development generally viewed from the street complements the identified streetscape.*

The existing three storey building is on a site that slopes both from front to the rear and from east to west. Existing development in the vicinity in the street includes buildings with a variety of storeys, height and bulk. The slope of the land provides a situation in which the subject building presents as a one storey building when viewed from the east, a two storey building when viewed further from the west and a three storey building when viewed from the side or rear. As a result, when generally viewed in the street the building is a 1-2 storey building. The proposal provides alterations that will remove the existing roof and provide an additional storey. This storey will extend 0.5m to 0.7m above the existing ridge. The storey has a design which includes a front elevation that slopes away from the street, similar to the existing roof style. Along with the slope, this design provides a similar bulk and presentation to the street as existing. This means that despite having four stories, the site has reasonable modulation along with a topography that ensures the presentation complements the identified streetscape.

*Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.*

In this circumstance, the proposed front fence is appropriate given the partially transparent design and the consistent nature with structures on the same side of the street in close vicinity. This includes two garages immediately to the west and fences to the east.

**3.4.2 Privacy and Security**

An assessment of the objectives for Privacy and Security under Clause 3.4.2 is made below:

*Objective 1) To minimise loss of privacy to adjacent and nearby development by:*

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

The proposal will minimise loss of privacy to and from adjacent properties through adequate setbacks, sufficient screening and landscaping.

The proposed western elevation has a setback of 0.6m to 1.9m across the 4 levels. In addition to this setback, there is a driveway between the subject site and the living areas at 81 Lauderdale Avenue. This driveway ensures adequate physical separation to minimise the loss of privacy to 81 Lauderdale Avenue and along with the screening provided to W20, and highlight windows to the front of the western elevation, provides an appropriate design for privacy.

The proposed eastern elevation has windows sufficiently designed, located and setback so as to minimise the loss of privacy to 77 Lauderdale Avenue. This includes screening, highlight windows and alignment which is not direct with any adjacent glazed living room at 77 Lauderdale Avenue.



The proposed top rear deck has a setback of over 13 metres and lower level balconies have a setback of over 11 metres to the dwelling at the rear, being 79B Lauderdale Avenue. These proposed setbacks along with the location above the dwelling to the rear, limit potential for overlooking (through separation and angle of looking). To further limit the potential for overlooking, an amended plan was received on 10 August 2017 to provide a planter box at the rear of the proposed top deck. This minimises potential overlooking from the deck area to the dwelling below at 79B Lauderdale Avenue.

*Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.*

The balance between highlight and full length windows at each elevation is a reasonable compromise in terms of increasing privacy without compromising access to light and air. In addition to this, the design of the rear deck on the top floor with a planter box allows for sufficient privacy without compromising access to views.

*Objective 3) To encourage awareness of neighbourhood security.*

The proposal provides sufficient window locations, entrances and open space to allow for awareness of neighbourhood security.

### 3.4.3 Maintenance of Views

After being re-notified, the proposed development included a top level which was setback a further 1 metre from the eastern boundary than the original proposal. The height poles in *Photo 3* show the locations of the originally proposed top floor. As a result, an indication of the amended proposal is that of the location of height poles in *Photo 3* but setback a further metre from the eastern boundary.

An assessment of the objectives for Maintenance of Views under Clause 3.4.3 is made below:

*Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

The subject site is in a location in which ocean views are obtained to the east from the subject site and neighboring dwellings as well as from dwellings on the opposite side of Lauderdale Avenue. Notably, there are view corridors which exist from dwellings on the opposite side of Lauderdale Avenue. These corridors exist both over the top and to the side of the existing building on the subject site. These views have been considered with reference to the View Principle established by the NSW Land and Environment Court below (under objective 2). In this situation, the provision of view sharing relates particularly to the proposed development and the dwellings on the opposite side of Lauderdale Avenue. The proposed development facilitates appropriate view sharing between the subject site and the dwellings on the opposite side of Lauderdale Avenue, particularly due to the design of the top floor. The setback of the top level maintains view corridors whilst also providing an area in which views can be obtained from the subject site. The top floor is setback 3 metres from the eastern boundary and 1.9 metres from the western boundary, whilst also being 4.7 metres from the boundary of 81 Lauderdale Avenue (with a battle-axe driveway in the middle). The top floor also provides decks to the rear which allow for views from private open space at the subject site.

*Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths), and*

*Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

An assessment of view loss has been undertaken with reference to the Views Principle established by the NSW Land and Environment Court. This has been made with consideration of view sharing and the importance of minimising disruption of views (particularly to the ocean views and views of the headland in this circumstance). The areas with potential for substantial view loss as a result of the proposed development are on the opposite side of the street from the subject site. These areas have been assessed under the view loss principle with consideration of each step below:

Sites on the opposite side of Lauderdale Avenue

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

**Comment:**

The views obtained from dwellings opposite the subject site are water views toward North Harbour including an interface between water and land toward Wellings Reserve (to the south). This interface between land and water also includes a marina and a sailing club. The subject water views are more extensive to the south-east, where the bay at North Harbour opens onto Sydney Harbour. The land and water interface on the northern side of North Harbour is obscured by existing development and vegetation on the lower side of Lauderdale Avenue. However, as a result of the whole water views as well as the land and water interface views on the southern side of North Harbour, the subject views are highly valued.



**Photo 1:** Taken from a standing position at a central location in a second storey living room at a dwelling opposite the site.





**Photo 2:** Taken from a standing position at a balcony from a dwelling north-west of the site.



**Photo 3:** Taken from a standing position at ground level from a living area at a dwelling opposite the site.

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

Comment:

The views obtained from the dwellings on the opposite side of Lauderdale Avenue are over the rear boundary being from balconies, living areas and private open space. Extensive water views will be maintained from both sitting and standing position for all levels above ground. The view with an interface between land and water (including the marina and sailing club) for the storeys above ground would also be protected from sitting and standing position as a result of the proposed development.

Views obtained from ground level are from inside the dwellings and from rear private open space (as can be seen in Photo 3). The water views are more partial at ground level due to the ridge of the existing building interrupting the interface between water and land. However, view corridors exist on both sides of the development and include views with a land-water interface.

The proposed development would protect water and land interface view corridors both on the eastern and western side of the subject site. The protection of these corridors is valued highly due to the whole nature of these views. In contrast, the existing views of the land and water interface over the top of 79A Lauderdale Avenue are more partial and dependant the position the views are obtained including from including sitting and standing position as well as location at ground level.



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

Comment:

The views obtained from the dwellings on the opposite site of Lauderdale Avenue include views from living areas and balconies at the rear of the properties. For the levels above ground, the view loss is assessed as being negligible-minor given the extent of water views maintained as compared to the amount of water view lost. In particular, extensive water views to the east are maintained. Also, views of the land and water interface are maintained from standing position in living rooms which adjoin the rear balconies. Views of the land and water interface are also protected from many seated positions in living rooms. This land and water interface retention and large extent of the water views maintained provide the situation in which view loss for storeys above ground is negligible-minor.

The views obtained from ground level include views from living rooms as well as views from less habitable areas. Partial land and water interface views that can be obtained by looking over 79A Lauderdale Avenue from standing position will be lost. However, this partiality of the land-water interface view along with the small extent of water view lost, provides a situation in which the view loss is minor to moderate.

The proposed development would maintain extensive water views and whole land-water interface views from many parts of living areas at dwellings on the opposite side of Lauderdale Avenue (from the subject site). Additionally, view corridors on both sides of the proposed development of a land-water interface will be maintained in the living areas at ground level, where the impact is greatest.

In consideration of this, the impact across the whole of the property at the property most greatly effected is minor.

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

Comment:

The proposed development is non-compliant with building height under the Manly LEP, 2013. However, as a result of the impact on views being minor the non-compliance is reasonable. In addition the land-water interface being largely retained and extensive water views being maintained, a complying proposal would have no substantial improvement in the impact on views. Additionally, the design provides a situation in which extensive views can be obtained reasonably from both the proposed development and all neighbouring dwellings. As a result, both the impact on views and the provision of views sharing is reasonable.

**Part 4 - Development Controls**

Site Area:264.8m <sup>2</sup>	<b>Permitted/ Required</b>	<b>Proposed</b>	<b>Complies Yes/No</b>
Density D4 1unit/300m <sup>2</sup>	3 units/264.8m <sup>2</sup>	2units/264.8m <sup>2</sup>	No but less dwellings than existing and same lot size (Torrens).
Wall height East side	8m	9.8m	No. See comments.
West side	8m	10.8m	No. See comments.
Number of Storeys	2	4	No. See comments.
Front setback	6.0m or streetscape	0m (for carport) 6.8m (dwelling)	Existing.
East setback side	3.27m	1m (existing) 0.7m (proposed box window- first floor) 3m (to proposed top level)	No. See comments.
West setback side	3.6m	0.9m (existing) 0.6m (proposed box window- first floor) 1.9m (to proposed top level)	No. See comments.
Setback Rear	8.0m	2.3m 3.7m (to proposed top floor)	No. See comments.
Open space - total	55% (145.64m <sup>2</sup> )	41.5% (110m <sup>2</sup> )	No improvement on existing due to deck on the top storey.

Open space - landscaped	35% (38.5m <sup>2</sup> )	13.6% (15m <sup>2</sup> )	No but as existing.
Open space - above ground	No more than 40% of total (44m <sup>2</sup> )	21m <sup>2</sup>	Yes.
Number of Endemic Trees	2	Not proposed.	Due to lack of existing landscaped area. This is unreasonable. Conditions have been imposed to ensure retention of trees.
Private Open Space	24m <sup>2</sup>	60m <sup>2</sup>	Yes.
Car Parking – Residents	1 or 2, depending on impact to streetscape	2-3 spaces (1 space is in tandem)	Yes. Consistent with the control in the DCP as the provision of more spaces would adversely impact the streetscape.
- Visitors	1 Space	1 space	Yes.
Fence height	1.5m	1.1-1.8m	No but reasonable given the transparent nature and context in the street.

**Comment**

LEP Clause 4.3 Height of buildings

The proposal is non-compliant with the numerical requirement for wall height and number of storeys required by Clause 4.1.2, as above. Clause 4.1.2 states that the objectives of Clause 4.3 of the Manly LEP are particularly applicable to the controls of the paragraph. An assessment has been made against these objectives as follows:

- a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

**Comment:**

The proposed height and building form is consistent with the topographic landscape, prevailing building height and desired future character. In particular, the slope of the site along with the prevailing building height of development to the east provides a situation in which the proposed building would achieve the characteristics desirable for the future streetscape. This includes a presentation of 1, 2 or 3 storeys depending on where the development is viewed in the street. The recessive nature of the top storey from the front of the street which includes a sloped, roof style at



the frontage, also minimises the visual impact caused by number of storeys. As a result, the proposed development is consistent with the desired streetscape.

*b) to control the bulk and scale of buildings,*

Comment:

The subject site has topography which involves a slope both from front to rear as well as east to west. This provides a situation in which the presentation of bulk and scale is varied across the site. The presentation of the proposed bulk is greatest at the rear of the proposed development due to the slope. This is a reasonable outcome in terms of presentation of bulk and scale to the streetscape. In addition, the proposed main building at the front eastern corner of the site recedes below the level of the carport. This level of the carport is at ground level of the street and due to its open nature provides a reasonable control of bulk and scale. The slope in combination with a design that allows the building to be recessive in the streetscape, provides a reasonable situation in terms of controlling bulk and scale.

*c) to minimise disruption to the following:*

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment:

The proposed non-compliance with the number of storeys control leads to the obstruction of a partial land-water interface view from ground level of the dwelling opposite the subject site. As a result of the extensive water views available beyond the subject site, the loss of view caused by non-compliance is proportionately minor. The proposed development provides a reasonable outcome in terms of view sharing as the top floor allows for views from private open space of the subject site whilst maintaining and protecting extensive water views for the dwellings opposite. Additionally, land and water interface views are maintained, despite the storey and wall height non-compliance. Full land and water interface views will be maintained for living rooms above ground level whilst the non-compliances will only have a minor impact on the land-water interface at ground level due to the retention of view corridors either side of the proposed development. This is further discussed in the section of this report relating to the Manly DCP, having regard to the View Loss principle established by the NSW Land and Environment Court.

*d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Comment:

The proposed top floor is setback from the lower floor and as a result has no unreasonable impact in regards to solar access. The physical separation that the driveway to the west provides and the lack of significant impact to any living room windows at 77 Lauderdale Avenue allows for sufficient provision of sunlight for neighbouring dwellings.

*e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Comment:

Not applicable.

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

*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.*

As a result of the narrow battle-axe style allotment and varied topography in the street, the proposed development would provide appropriate spatial proportions in relation to the street. The proposed front setback for the building is as existing which is consistent with the prevailing building line in the street. The proposed setback of the carport is consistent with numerous nearby examples of car parking at the front setback. The proposed carport is also open in nature which is a desirable outcome in order to reduce bulk in the streetscape and maintain a more open outlook.

Given the battle-axe driveway to the west of the proposed development, the proposed non-compliant western setback is reasonable in this situation. This is due to the physical separation that the battle axe driveway provides between the subject site and neighbouring dwellings, maintaining appropriate proportions in the street. At the eastern front setback, the subject property is at its highest in slope. This provides a situation in which the presentation of bulk is less than the rest of the site. Along with the setback of the top floor from the lower floors, this provides a situation in which the proposed non-compliant eastern setback does not provide a feature that would lead to unreasonable spatial proportions in the streetscape.

*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.*

Subject to conditions, the proposal will provide a reasonable outcome in terms of providing privacy. This is contributed to by the recommended condition for the balustrade to be opaque at the rear, the physical separation caused by the driveway to the west and the lack of direct aligning living room windows at the western elevation.

The proposed setback of the top floor from lower floors allows for view corridors and provision of sunlight which is compliant with the Manly DCP, 2013. In particular, the setback of the top floor from the east provides a view corridor which maintains a land-water interface view (See *Photo 3*).

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

The siting of the building is reasonable given the lack of visual and amenity impact.

*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.*

There are no significant proposed changes to natural features or open space. The proposed non-complaint setbacks do not relate to the maintenance or enhancement of natural features on site in this circumstance. Conditions have been imposed to ensure natural features (which are not exempt from removal under the Manly DCP) are not removed.

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

Not applicable.

**Part 5 - Special Character Areas and Sites**

Special Character Areas and Sites	Applicable	Not Applicable
Conservation Area		✓
Foreshore Scenic Protection Area	✓	
Threatened Species and Critical Habitat		✓
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓
Gurney Crescent and Clavering Road, Seaforth		✓

**Comment:**

**Foreshore Scenic Protection Area**

The proposal is consistent with the provisions for consideration under subclause 5.4.1.1. The alterations are reasonable in terms of bulk, and presentation, and will have no unreasonable visual impact on the existing natural environment.

**Development Control Plan for Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 Sydney Harbour Foreshores & Waterways Areas:**

The proposed development is consistent with the relevant controls of Clauses 2.2, 3.4, 4.2, 4.4 and 4.5 of the Sydney Harbour Foreshores & Waterways Areas Development Control Plan for Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

**79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and**  
No planning agreement has been entered into in relation to the proposed development.

**79C(1)(a) (iv) - the regulations**

The proposed development has been assessed having regard to the Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 (Amendment 8) and is considered to be satisfactory.

**79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)**

There is no Coastal Zone Management Plan applicable for the Manly area.

**79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

The proposed development as modified by the conditions of consent is not considered to have any detrimental impact on the natural and built environments and is accordingly recommended for approval.

**79C(1) (c) - the suitability of the site for the development,**

The proposed development as modified by the conditions of consent is considered to be suitable for the site.

**79C(1) (d) - any submissions made in accordance with this Act or the regulations**

The application was notified to nearby and adjoining property owners in accordance with Section 2.2 of Council's Development Control Plan 2013 with 4 submissions received from the following objectors raising the following concerns:

Submission and Address	Main Issues raised in the submission	Comments on submission
1. P. Rochester, 6/76 Lauderdale Avenue, Fairlight.	<ul style="list-style-type: none"> <li>Hindrance to and taking of water views.</li> <li>Roof height.</li> </ul>	<ul style="list-style-type: none"> <li>An assessment of views for sites opposite the subject site has been undertaken earlier in this report.</li> <li>The proposed roof height has been assessed under building height earlier in this report. It has been found that a variation to the building height standard is warranted due to the lack of unreasonable impact.</li> </ul>
2. Confidential.	<ul style="list-style-type: none"> <li><u>Planning Principles</u> <ul style="list-style-type: none"> <li>The height and bulk caused by non-compliance with development standards (FSR and height) grossly offends view preservation principles.</li> <li>The existing house exploits the land by exceeding permitted use standards. The developer applies for more without public benefit or any relevant justification.</li> <li>There have been no LEP Clause 4.6 applications submitted for the amended Plans. It is requested that the document be seen by the submitter and re-notified.</li> </ul> </li> <li><u>Severe loss of Neighbour's Harbour View</u> <ul style="list-style-type: none"> <li>The amendment proposes to move the floor 995mm westward allowing a small glimpse of views of iconic Sydney Harbour.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li><u>Planning Principles</u> <ul style="list-style-type: none"> <li>An assessment of relevant principles has been done earlier in this report and found no unreasonable impact. In addition, the clause 4.6 applications provided sufficiently justify contravening the standards.</li> <li>Amended Clause 4.6 applications were provided and did not require re-notification, consistent with DCP. The applications were available for viewing online.</li> </ul> </li> <li><u>Severe loss of Neighbour's Harbour View</u> <ul style="list-style-type: none"> <li>An assessment of views for sites opposite the subject site has been undertaken earlier in this report.</li> </ul> </li> <li><u>Height</u> <ul style="list-style-type: none"> <li>An assessment of building height under the Manly LEP has found the proposed height to be reasonable.</li> </ul> </li> <li><u>Parking</u> <ul style="list-style-type: none"> <li>The parking proposed is compliant with the requirements under the Manly DCP. It is also noted that there is reduction in number of dwellings from 3 to 2.</li> </ul> </li> <li><u>Density/FSR and Green areas</u> <ul style="list-style-type: none"> <li>An assessment of FSR and Open Space under the Manly</li> </ul> </li> </ul>



	<ul style="list-style-type: none"> <li>- The proposed deck allows for balustrades, furniture, plants, umbrellas, pergolas and people.</li> <li>- The proposal would block living area views of Jilling cove. If permitted, only a view of Davis Marina will remain. The marina and moored boats provide an iconic harbour view.</li> <li>- The application fails to describe loss of views.</li> <li>- The 4 storey height is unreasonable and could set a precedent.</li> <li>• <u>Height</u> <ul style="list-style-type: none"> <li>- The increase in height southward towards the harbour increases blockage of views.</li> <li>- Non-compliance with building and wall heights. This greater in terms of height and impact on views, than existing.</li> </ul> </li> <li>• <u>Parking</u> <ul style="list-style-type: none"> <li>- The development fails to provide sufficient parking for tenants including inadequate angles for access. The proposal would increase accommodation without providing any added parking.</li> <li>- There is no parking available on the southern side of Lauderdale Avenue. This is where high density building exist in a small area. It is also effectively doubled by battle-axe lots. As a result, the parking shortage is severe.</li> </ul> </li> </ul>	<p>DCP has found the proposal to be reasonable.</p> <ul style="list-style-type: none"> <li>• Open space is deemed to comply given the increase in total open space provided by the proposal.</li> <li>• <u>Foreshore area amenity</u></li> <li>• An assessment of the impact on the Foreshore Scenic protection has found the proposed development to be reasonable.</li> <li>• <u>Density/FSR and Green areas</u></li> <li>• The applications to vary the development standards of Floor Space ratio and building height are supported under Clause 4.6 of the LEP. The reasons for this are outlined earlier in this report.</li> <li>• The inaccuracies in regards to measurement of non-compliance are not so substantial as to reasonably warrant refusal or resubmittal.</li> <li>• The development is considered to meet the clause 4.6 test under Blue Label Constructions Pty. Ltd. v Waverly Council [2017] NSWLEC 1059 at [93] to [94]. This is a result of the proposal not having significant impact on environmental amenity and sufficiently justifying the proposed variation of the standards under Clause 4.6.</li> </ul>
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	<ul style="list-style-type: none"> <li>• <u>Increase in Density/FSR and lack of green areas</u></li> <li>• <u>Foreshore area amenity</u> <ul style="list-style-type: none"> <li>- The four storey gross bulk will detract aesthetically from Jilling Cove, Wellings Reserve and the Harbour scenic walkway, and the North harbour Recreational Park and beach area. There is no aesthetic sympathy to the sloped topography.</li> </ul> </li> <li>• Failure of applicant to address and justify FSR under Clause 4.4 and 4.6.</li> <li>• The proposal is inconsistent with LEP Clause 4.3 for building height.</li> <li>• Inaccuracies in numerical information provided.</li> <li>• The development fails the clause 4.6 test under Blue Label Constructions Pty. Ltd. v Waverly Council [2017] NSWLEC 1059 at [93] to [94].</li> <li>• The inconsistency with size, height and bulk controls and objectives mean that consent must not be granted under Clause 4.6.</li> </ul>	
<p>3. A. Condell, 79B Lauderdale Avenue, Fairlight.</p> <p><b>Objection Withdrawn</b></p>	<ul style="list-style-type: none"> <li>• Query as to what is involved with driveway work. It is noted that title of driveway is to 79B Lauderdale Avenue.</li> <li>• The development should include works to make side stairway safe. Potential for cladding to encroach on stairway.</li> <li>• The plans do not show a well-established tree. Concern is raised for this tree.</li> </ul>	<ul style="list-style-type: none"> <li>• The plans do not provide any indication of works to the driveway.</li> <li>• The proposed area for the side stairs is reasonable in terms of access and safety.</li> <li>• The proposal does not include the removal of any trees. A condition has been imposed to ensure retention of trees which are not exempt for removal under the Manly DCP.</li> <li>• The proposed physical separation along with a</li> </ul>

	<ul style="list-style-type: none"> <li>The additional floor and balconies will diminish privacy.</li> <li>Want to see and ensure safe access during construction.</li> </ul>	<ul style="list-style-type: none"> <li>planter box at the top level provide a reasonable outcome in terms of minimising privacy loss.</li> <li>Conditions have been recommended for construction works.</li> </ul>
4. M. Licardy.	<ul style="list-style-type: none"> <li>The height of the roof exceeds the height restriction.</li> </ul>	<ul style="list-style-type: none"> <li>An assessment of building height under the Manly LEP has found the proposed height to be reasonable.</li> </ul>
5. S & B. Nisbett.	<ul style="list-style-type: none"> <li>Impact of roof height on views.</li> </ul>	<ul style="list-style-type: none"> <li>An assessment of views for sites opposite the subject site has been undertake earlier in this report. This assessment has found the maintenance of views to be reasonable, consistent with the View loss principle.</li> </ul>

**79C(1) (e) - the public interest.**

The proposed development as modified by the conditions of consent is not considered to have an adverse impact on the public interest.

**S94 Contribution towards provision or improvement of amenities or services**

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- (1) *If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*
- the dedication of land free of cost, or*
  - the payment of a monetary contribution, or both.*
- (2) *A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'*

**Comments:**

In this case, the proposal is for a reduction in dwelling density. As a result there will be no additional dwellings and contributions are not applicable.

**CONCLUSION:**

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory for **approval**, subject to conditions.

**RECOMMENDATION**

In consideration of the written request made by the applicant pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013, the consent authority is satisfied that compliance with the development standard contained in Clause 4.3 (Height of Buildings) and Clause 4.4 (Floor Space Ratio) of the Manly Local Environmental Plan 2013 is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard.

That Development Application No. 326/2016 for Alterations and additions to the existing building and use as a dual occupancy (attached) and strata subdivision at 79A Lauderdale Avenue be **approved** subject to the following conditions:-

**General Conditions**

1. The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

*Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. DA326/2016:*

Plan No. / Title	Issue/ Revision & Date	Prepared by
DA11-Site Plan	Issue B- 14/06/2017	MM&J Architects
DA14- Lower Ground Floor Plan	Issue A- 25/11/2016	MM&J Architects
DA15- Ground Floor Plan	Issue A- 25/11/2016	MM&J Architects
DA16- First Floor Plan	Issue B- 14/06/2017	MM&J Architects
DA17- Second Floor Plan	Issue C- 10/08/2017	MM&J Architects
DA18- Carport Ground Floor	Issue A- 25/11/2016	MM&J Architects
DA19- Carport First Floor	Issue A- 25/11/2016	MM&J Architects
DA20- Sections 1 & 2	Issue B- 14/06/2017	MM&J Architects
DA21- Sections 3 & 4	Issue B- 14/06/2017	MM&J Architects
DA22- Section 5	Issue B- 14/06/2017	MM&J Architects
DA23- Section 6	Issue B- 14/06/2017	MM&J Architects
DA24- Sections 7 & 8	Issue C- 10/08/2017	MM&J Architects
DA25- North Elevation	Issue B- 14/06/2017	MM&J Architects
DA26- South Elevation	Issue B- 14/06/2017	MM&J Architects
DA27- East Elevation	Issue B- 14/06/2017	MM&J Architects
DA28- West Elevation	Issue B- 14/06/2017	MM&J Architects
DA29- Front Fence Detail	Issue A- 25/11/2016	MM&J Architects
Strata Plan Lower Ground Floor and Ground Floor	Surveyor Reference:13630Astrata 1	MM&J Architects
Strata Plan First Floor and Second Floor	Surveyor Reference:13630Astrata 1	MM&J Architects
Lower ground floor landscape plan	06/09/2016	Terraneo
Ground floor landscape plan	06/09/2016	Terraneo
First floor landscape plan	06/09/2016	Terraneo
Second floor landscape plan	06/09/2016	Terraneo

*Reference Documentation relating to Development Consent No. DA326/2016:*

- BASIX certificate with certificate number A250983\_02 dated Wednesday 14 June 2017.

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

*Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council*

#### **PRESCRIBED CONDITIONS**

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

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

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

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

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



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

Reason: Legislative Requirement (DACPLB09)

**ANS01**

Prior to the issue of the Subdivision Certificate, a completed Subdivision Certificate form, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919 are to be submitted to Council. Five copies of the final plan of subdivision are to be submitted (one original and four copies).

Reason: Statutory requirement of the Conveyancing Act 1919.

**1A (1AP04)**

Alteration and demolition of the existing building is limited to that documented on the approved plans (by way of notation). No approval is given or implied for removal and/or rebuilding of any portion of the existing building which is not shown to be altered or demolished.

Reason: To ensure compliance with the approved development.

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

**ANS02**

A Construction traffic management plan (CTMP) is to be submitted for approval prior to release of construction certificate outlining the following:

- a) how the development will be constructed,
- b) what truck movements are anticipated to and from the site and at what stage of the project,
- c) any traffic control measures that will be required to facilitate construction noting that No Parking and Bus Zone restrictions currently exist in the vicinity on the frontage of the site.

The CTMP is also to outline how pedestrian and vehicular access will be maintained to 79b Lauderdale Avenue throughout all stages of the project and to clearly outline any points within the construction schedule when vehicular access will be impacted. The CTMP to be prepared in liaison with the owners of 79B Lauderdale Avenue and submitted for approval prior to commencement.

Reason: To ensure appropriate management of traffic during construction.

**ANS03**

That additional plans be prepared and submitted for approval prior to construction of the driveway showing how the sandstone steps adjacent to the driveway will be reconstructed and indicating the proposed width of the steps and the remaining width of driveway adjacent to those steps. The new steps and any related driveway adjustments to be completed at the applicant's cost. Any adjustment to the steps or the common driveway serving 79a and 79b Lauderdale Avenue required as a result of this development be completed at full cost to the applicant.

Reason: To ensure the stairs are adequately maintained.

**2 (2CD01)**

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit as per the current rates in Council's Fees and Charges. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.



Note: Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicants interest for it to be as full and detailed as possible.

Where by Council is not the Principal Certifying Authority, refund of the trust fund deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority and infrastructure inspection by Council.

Reason: To ensure security against possible damage to Council property.

### 3 (2CD04)

Where any shoring for excavation is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings and specifications certifying the shoring will be adequate for their intended purpose and must be submitted to the Council/Accredited Certifier for approval with the Construction Certificate. The documentation prepared and certified by an appropriately qualified and practicing structural engineer is to show all details, including the extent of encroachment and the method of removal and de-stressing of shoring elements. A copy of this documentation must be provided to the Council for record purposes at the time of Construction Certificate application.

Reason: To ensure the protection of existing public infrastructure and adjoining properties.

### 4 (2CD05)

Detailed engineering drawings of all work must be submitted for approval by the Council/Accredited Certifier prior to the release of the Construction Certificate.

Reason: To ensure the provision of public infrastructure of an appropriate quality arising from the development works to service the development.

### 5 (2CD07)

A Certificate of Adequacy signed by a practising structural engineer stating the existing structure is capable of supporting the proposed additions, is to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: The existing building must be able to support proposed additional loading.

### 6 (2DS01)

A detailed stormwater management plan is to be prepared to fully comply with Council's Specification for On-site Stormwater Management 2003 and Specification for Stormwater Drainage 2003 and must be submitted to Council prior to issue of the Construction Certificate. The stormwater management plan and designs are to be prepared by a suitably qualified engineer with experience in hydrology and hydraulics.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that infrastructure reverting to Council's care and control is of an acceptable standard.

### 7 (2DS02)

A Stormwater Management Plan (SWMP) in line with Council's stormwater management guidelines and signed off by a practising Chartered Professional Engineer on the National Professional Engineer's Register (NPER) at Engineers Australia is to be submitted to the Council/Accredited Certifier, prior to issue of the Construction Certificate. The SWMP is to include but is not limited to the following:

- Increase in the impervious area (m<sup>2</sup>)
- Impervious percentage (%) post development
- Demonstration of no-adverse flooding issues to the downstream and upstream properties
- Peak flow rate to street drainage system in a 1:100 Average Recurrence Interval (ARI) flood event
- Connection details and location of the outlet drainage pipe, if applicable.

- If it is an absorption trench zone (Zone 2 as per Storm Water Management guidelines), then the detail calculations along with the soil report to be submitted for review by demonstrating no-adverse drainage issues due to this development.
- Details of the Chartered Engineer including full name, signature and registration number is required.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure public infrastructure in Council's care and control is not overloaded.

8 (2FP03)

No portion of the proposed building or works, as approved within the subject site, are to encroach upon any road reserve or other public land except as may be permitted by the Local Government Act 1993. This includes the opening and closing of gates and doors which must open and close within the subject site.

Reason: To ensure structures are contained within the site.

9 (2FR01)

A Fire Safety Schedule specifying the fire safety measures (both current and proposed) which should be implemented in the building premises must be submitted with the Construction Certificate application, in accordance with Part 9 Clause 168 of the Environmental Planning and Assessment Regulation 2000.

Note: A Construction Certificate cannot be issued until a Fire Safety Schedule is received.

Reason: Compliance with the Environmental Planning and Assessment Act 1979.

10 (2MS01)

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,
- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

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

11 (2PT01)

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

12 (2PT02)

All driveways, car parking areas and pedestrian paths are to be suitably surfaced. Details of the treatment to these areas are to be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate.

Reason: To provide suitable stormwater disposal and to prevent soil erosion and runoff.

13 (2WM02)

A Waste Management Plan is to be submitted with the application prior to a Construction Certificate being issued in accordance with the Manly Development Control Plan 2013.

The plan should detail the type and estimate the amount of demolition and construction waste and nominate how these materials will be sorted and dealt with. Weight dockets and receipts must be kept as evidence of approved methods of disposal and recycling. All demolition and excess construction materials are to be recycled where ever practicable. It should include consideration of the facilities required for the ongoing operation of the premises' recycling and waste management services after occupation. A template is available from the Manly Council website.

Reason: To plan for waste minimisation, recycling of building waste and on-going waste management.

**CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT**

14 (3CD03)

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

Reason: To protect the public interest and safety.

15 (3PT01)

In accordance with the Roads Act 1993, written consent from Council must be obtained and must be in hand prior to any track equipped plant being taken in or onto any roadway, kerb & gutter, footway, nature strip, or other property under Council's control.

Reason: To ensure appropriate protection of public infrastructure and facilitate access for public and vehicular traffic.

16 (3PT02)

Applications for a construction zone on a local road require 28 days notice to Council indicating location and length. All construction zones require the approval of the Manly Traffic Committee.

Reason: To ensure Council and the Traffic Committee have sufficient time and information to assess the traffic and access implications of a proposed construction zone and to develop appropriate responses to those implications.

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

17 (4AP02)

A copy of all stamped approved drawings, specifications and documents (including the Construction Certificate if required for the work incorporating certification of conditions of approval) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

Reason: To ensure the form of the development undertaken is in accordance with the determination of Council, public information and to ensure ongoing compliance.

18 (4CD01)

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.



- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) All waste must be contained entirely within the site.
- 11) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 12) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 13) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 14) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 15) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 16) Building operations such as brick-cutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 17) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.
- 18) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

#### 19 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday (including works undertaken by external contractors). No site works can be undertaken on Sundays or public holidays.

Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

#### 20 (4CD05)

Retaining walls being constructed in conjunction with excavations must be in accordance with structural engineer's details. Certification by a suitably qualified structural engineer that the constructed works comply with the structural detail must be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure the structural adequacy of the retaining walls.

#### 21 (4CD07)

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Workcover NSW. Before starting work, a work site-specific permit approving each asbestos project must be obtained from Workcover NSW. A permit will not be granted without a current Workcover licence.

All removal, repair or disturbance of or to asbestos material must comply with the following:

- The Work Health and Safety Act 2011.
- The Work Health and Safety Regulation 2011.
- How to Safely Remove Asbestos Code of Practice – WorkCover 2011.

The owner or occupier of the premises must consult an appropriately qualified and Australian Institute of Occupational Hygienists registered professional to undertake an assessment of the site to determine the potential for contamination. The owner or occupier must develop a management plan and be issued with Clearance Certificate before the commencement of any work.

Reason: To ensure the health of site workers and the public.

**22 (4LD03)**

The felling, lopping, topping, ringbarking, wilful destruction or removal of any tree/s unless in conformity with this approval or subsequent approval is prohibited. It is noted that this consent does not give approval for the removal of any trees, except that would be otherwise exempt for removal.

Reason: To prohibit the unnecessary damage or removal of trees without permission from Council during any construction.

**23 (4LD04)**

The following precautions must be taken when working near trees to be retained:

- harmful or bulk materials or spoil must not be stored under or near trees,
- prevent damage to bark and root system,
- mechanical methods must not be used to excavate within root zones,
- topsoil from under the drip line must not be added and or removed,
- ground under the drip line must not be compacted, and
- trees must be watered in dry conditions.

Reason: This is to ensure no damage is caused to trees from various methods of possible damage.

**24 (4LD06)**

All disturbed surfaces on the land resulting from the building works authorised by this approval must be revegetated and stabilised to prevent erosion either on or adjacent to the land.

Reason: To prevent/contain erosion.

**25 (4MS04)**

An approved Erosion and Sediment Management plan is to be implemented from the commencement of works and maintained until completion of the development.

The design and controls addressed in the Sediment and erosion management plan must comply with the criteria identified in:

- Manly Development Control Plan 2013, Amendment 2, and
- Manly Councils Guidelines for Sediment and Erosion Controls on building sites, 2005, and
- The document "Managing Urban Stormwater: Soils and Construction" Volume 1, 2004.

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

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**

**26 (5DS01)**

Stormwater drainage from the proposed addition/extension must be disposed of to the existing drainage system. All work is to be carried out in accordance with Council standards and specifications for stormwater drainage. Work is to be completed prior to the issue of the Occupation Certificate.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure infrastructure reverting to Council's care and control is of an acceptable standard.

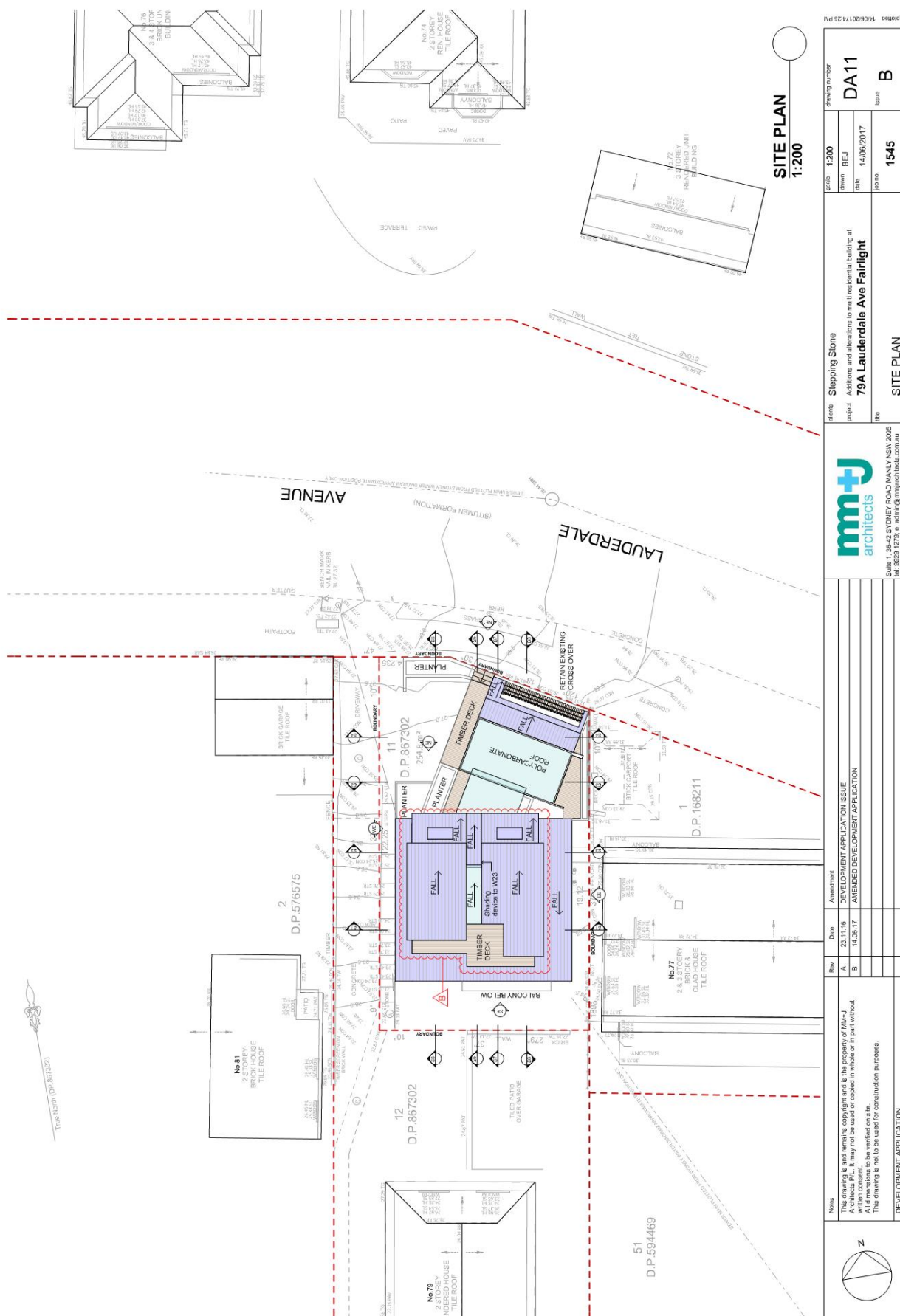


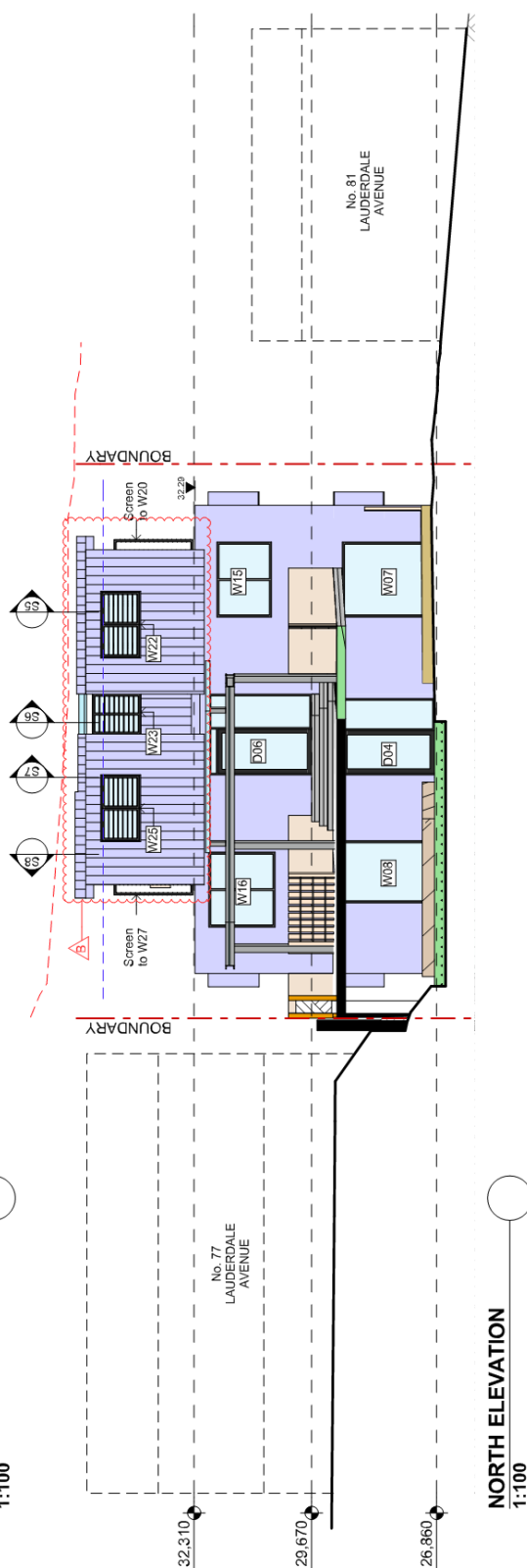
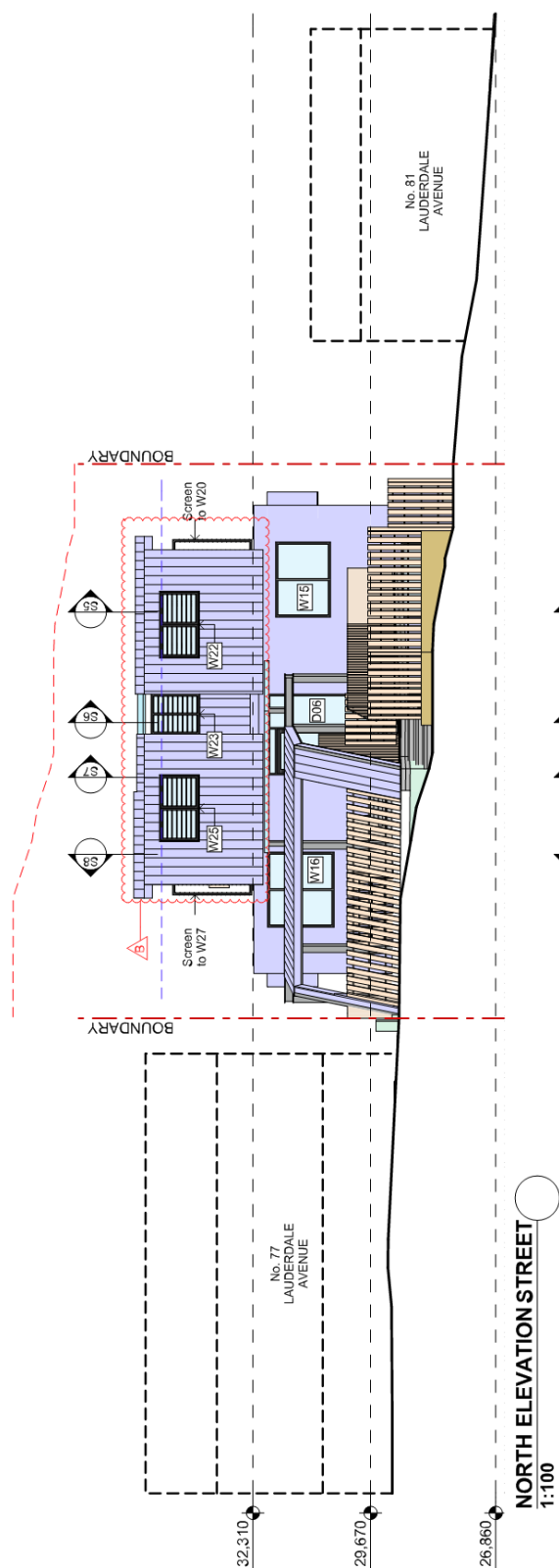
**ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR  
DEVELOPMENT**


27 (6MS02)

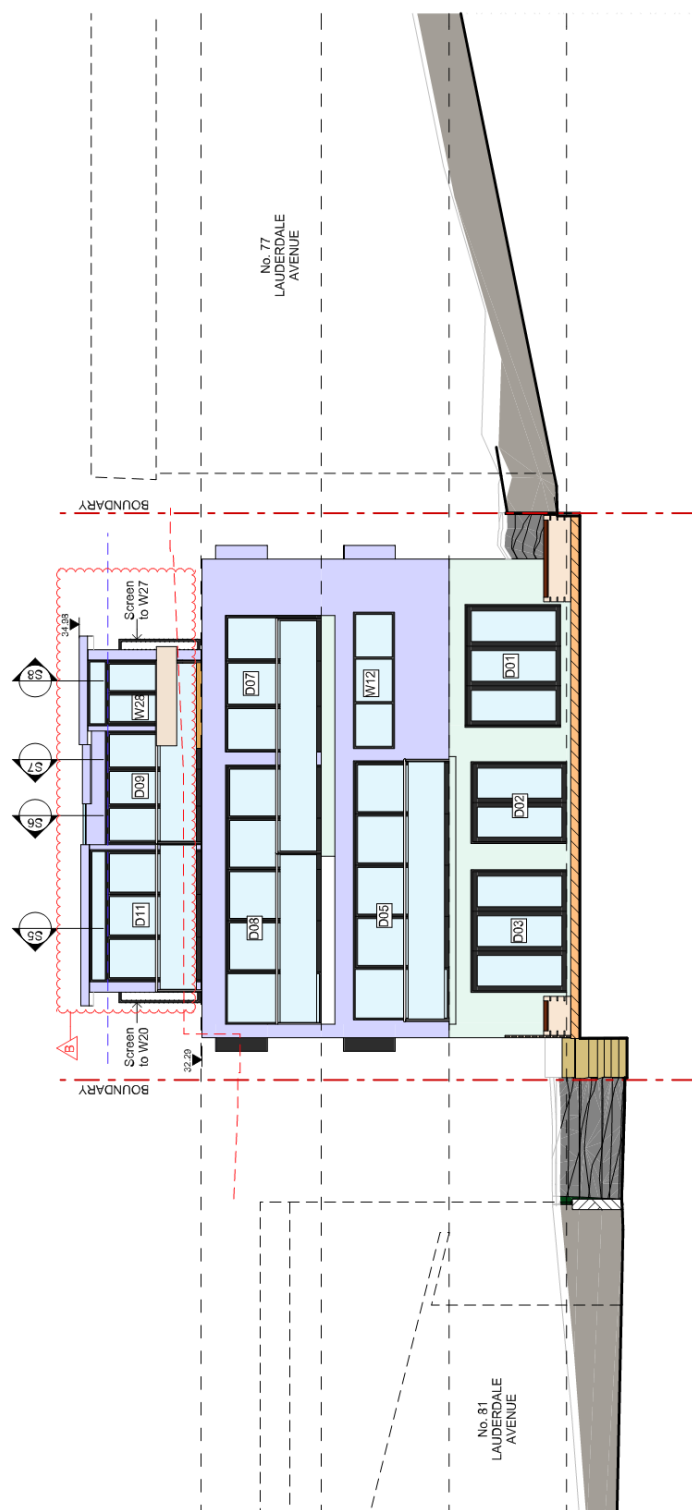
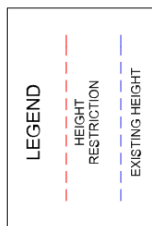
No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

Reason: Statutory requirement, Environmental Planning and Assessment Act 1979.



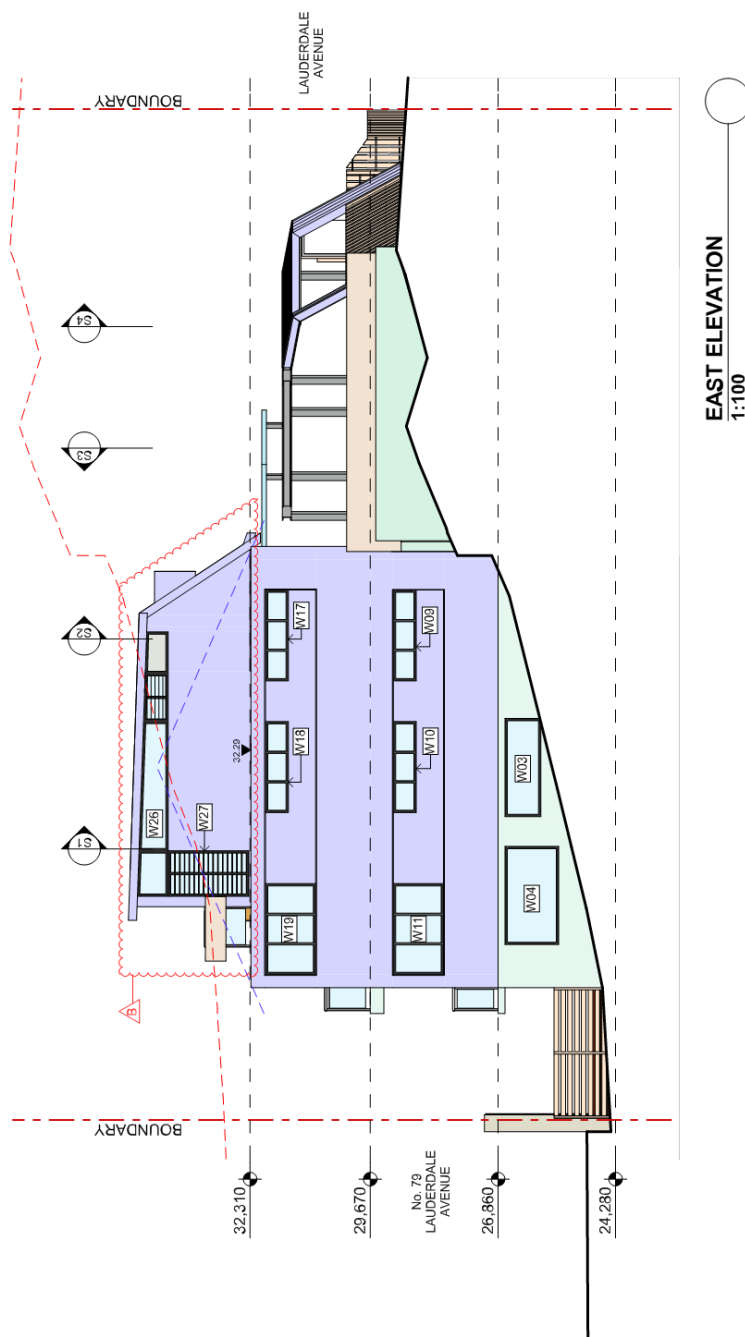
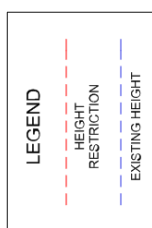


Notes	Rev	Date	Amendment		client <b>Stopping Stone</b> project Additions and alterations to multi residential building at <b>79A Lauderdale Ave Fairlight</b> title 1545	scale 1:100 drawn BEJ date 14/06/2017 job no.	drawing number <b>DA25</b> issue <b>B</b>
	A	23.11.16	DEVELOPMENT APPLICATION ISSUE				
	B	14.06.17	AMENDED DEVELOPMENT APPLICATION				
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SOUTH ELEVATION  
1:100

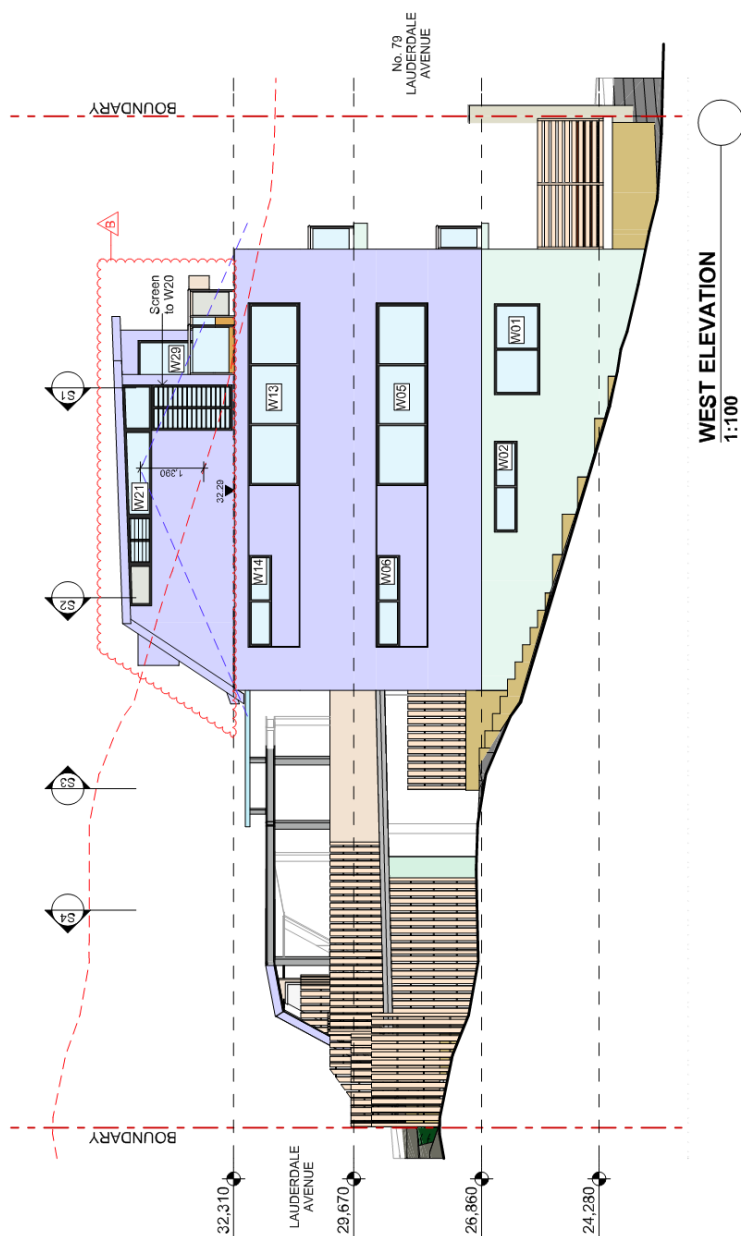
Notes	Rev.	Date	Assessment	Client	Scale	Drawing number	Issue
This drawing is not to be used or copied in whole or in part without written consent. This drawing is not to be used for Council or Construction purposes.	A	23.11.16	DEVELOPMENT APPLICATION ISSUE	Slipping Stone	1:100	DA26	B
	B	14.06.17	AMENDED DEVELOPMENT APPLICATION	79A Lauderdale Ave Fairlight	1545	14/06/2017	
SOUTH ELEVATION							
mm+ architects Suite 1, 36-42 SYDNEY ROAD MANNLY NSW 2035 Tel: 9029 1272 or admin@mmarchitects.com.au							



**EAST ELEVATION**  
**1:100**



<p>Notes</p> <p>This drawing is not suitable for copyright and is the property of M+CA Architects Pty. It may not be used or copied in whole or in part without written consent.</p> <p>All dimensions to be verified on site.</p> <p>This drawing is not to be used for Council or Construction purposes.</p>	Rev	Date	Amendment	 <p>Stepping Stone 79A Lauderdale Ave Fairlight 1545 EAST ELEVATION</p>	<p>scale 1:100</p> <p>drawn BEJ</p> <p>date 14/06/2017</p> <p>job no. 1545</p> <p>issue B</p>	<p>drawing number</p> <p>DA27</p>
	A	23.11.16	DEVELOPMENT APPLICATION ISSUE			
	B	14.06.17	AMENDED DEVELOPMENT APPLICATION			





Notes	Rev	Date	Amendment	Client	Scale	Drawing number	Issue
The drawing is not to be used for construction purposes. It may not be used or copied in whole or in part without written consent. This drawing is not to be used for Council or Construction purposes.	A	23.11.16	DEVELOPMENT APPLICATION ISSUE	Slipping Stone	1:100	DA28	B
	B	14.09.17	AMENDED DEVELOPMENT APPLICATION	79A Lauderdale Ave Fairlight	1:100	1545	
DEVELOPMENT APPLICATION							
<p>mm+J architects</p> <p>Suite 1, 36-42 SYDNEY ROAD MARIY NSW 2005 Tel 9029 1272 or admin@mmjarchitects.com.au</p>							



	Notes	Rev	Date	Amendment	 Suite 1, 36-42 SYDNEY ROAD MARLY NSW 2005 tel 0023 1272 x. admin@mmjarchitects.com.au	client <b>Slipping Stone</b> project Additions and alterations to multi residential building at <b>79A Lauderdale Ave Fairlight</b> date 25/11/2016 title <b>FRONT FENCE DETAIL</b>	scale <b>1:50</b> sheet BEJ draw 25/11/2016 drawn 1545 date	drawing number <b>DA29</b> issue <b>A</b>
		A	23.11.16	DEVELOPMENT APPLICATION ISSUE				
	This drawing is not for construction purposes. This drawing is not to be used for construction purposes. This drawing is not for construction purposes. 							