

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL MEETING

Notice is hereby given that a Meeting of the Northern Beaches Local Planning Panel will be held in the Council Chambers, Civic Centre, Dee Why on

WEDNESDAY 21 MARCH 2018

Beginning at 1.00PM for the purpose of considering and determining matters included in this agenda.



Peter Robinson
Executive Manager Development Assessment

Panel Members

Lesley Finn	Chair
Brian Kirk	Town Planner
Robert Hussey	Town Planner
John Simmonds	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

**Agenda for a Meeting of the Northern Beaches Local Planning Panel
to be held on Wednesday 21 March 2018
in the Council Chambers, Civic Centre, Dee Why
Commencing at 1.00PM**

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	Nil	

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 7 MARCH 2018

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 7 March 2018 were adopted by the Chairperson and have been posted on Council's website.

3.0 NORTHERN BEACHES LOCAL PLANNING PANEL REPORTS

ITEM 3.1 DA2017/0636 - LOT 39 OLD PITTWATER ROAD BROOKVALE -
DEMOLITION WORKS AND CONSTRUCTION OF A MULTI
DWELLING HOUSING DEVELOPMENT

REPORTING OFFICER LUKE PERRY

TRIM FILE REF 2018/167848

ATTACHMENTS 1 [↓](#) Assessment Report
 2 [↓](#) Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2017/0636 for Demolition works and construction of a Multi Dwelling Housing Development at Lot 39 DP 778287, Lot 39 Old Pittwater Road, Brookvale for the reasons outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2017/0636
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Responsible Officer:	Luke Perry
Land to be developed (Address):	Lot 39 DP 778287, 39 / 0 Old Pittwater Road BROOKVALE NSW 2100
Proposed Development:	Demolition works and construction of a Multi Dwelling Housing Development
Zoning:	Warringah LEP2011 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Development Assessment Panel – Central
Land and Environment Court Action:	No
Owner:	Hihati Pty Ltd
Applicant:	Hihati Pty Ltd

Application lodged:	28/06/2017
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	14/07/2017 to 01/08/2017
Advertised:	15/07/2017
Submissions Received:	27
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,297,586.03
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ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;



- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D6 Access to Sunlight
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - Appendix 1 Car Parking Requirements

SITE DESCRIPTION

Property Description:	Lot 39 DP 778287 , 39 / 0 Old Pittwater Road BROOKVALE NSW 2100
Detailed Site Description:	<p>The subject site consists of a single allotment located on the northern side of Old Pittwater Road.</p> <p>The site is irregular in shape with a frontage of 8.41m along Old Pittwater Road and a depth of 79.33m. The site has a surveyed area of 869.3m².</p> <p>The site is located within the R3 Medium Density Residential zone and accommodates a childcare centre with at grade car parking at the front of the site.</p> <p>The site is located at the interface of land use zones with land to the west of the site zoned IN1 General Industrial.</p> <p>The site benefits from an existing right of carriageway located along the western boundary of the site. The right of carriageway allows for access, drain water and contains an easement for services.</p> <p>There is minimal fall across the site from the rear boundary to the street frontage of approximately 1.2m.</p>



The site is mapped as being flood affected under Warringah Local Environmental Plan 2011.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by a mix of commercial/industrial and residential land uses. Land surrounding the site that is zoned R3 Medium Density Residential has been developed to accommodate medium density housing. This lot is now isolated with no option to consolidate with other allotments.

Surrounding the site to the north and east are residential flat buildings. To the south is a residential flat building and to the west are a mix of warehouse and industrial buildings.

Warringah Mall is located approximately 375m to the south of the subject site.

Map:



SITE HISTORY

The following applications are relevant to the subject site:

Development Consent No. 89/79

This application for 'To use an existing kindergarten and construct an additional access and on site parking' was granted approval on 26 February 1989.

Pre Lodgement Meeting (PLM2016/0055)



A pre lodgement meeting was held on 14 June 2016 to discuss a proposal that is the subject of this application. The notes of the meeting provide concluding comments and recommendations relating to side setbacks, side boundary envelope compliance, building bulk, privacy and landscaping. The applicant has made attempts to satisfy these recommendations and address the concerns raised in the development application.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the construction of multi dwelling housing.

Specifically the works include:

- 5 x 2 bedroom town houses;
- Car parking for 7 vehicles;
- Landscaping works; and
- Garbage room.

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:

Section 79C 'Matters for Consideration'	Comments
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.
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)	<p><u>Division 8A</u> 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.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p>



Section 79C 'Matters for Consideration'	Comments
	<p><u>Clauses 54 and 109</u> 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.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> 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.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<p>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</p>	<p><u>Environmental Impact</u></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>The subject site is relatively flat and without any topographical constraint. The site is flood affected and the applicant has designed the development in a manner which adequately addresses the requirements for flood affected land and is recommended for approval subject to conditions which are contained within the Recommendation of this report by Council's Flood Officer and Development Engineers.</p> <p>The proposal for 'multi-dwelling housing' is permitted with consent within the R3 Medium Density Residential zone. The area has undergone substantial transition over the last decade from low density housing to medium density housing with the subject site one of the last remaining sites to be redeveloped. This has also places significant spatial constraints on the site as it has become isolated by the independent redevelopment of the adjoining lots to the north and east.</p>



Section 79C 'Matters for Consideration'	Comments
	<p>Notwithstanding the constraints of the site , the assessment of this application has found that the development will ensure a reasonable level of privacy, amenity and solar access is maintained to the adjoining properties and the future dwelling occupants of the development.</p> <p>The subject site is located within close proximity to Warringah Mall Shopping centre and associated bus interchange's and stops along Pittwater Road which provide public transport services to the broader Northern Beaches area and Sydney Central Business District.</p> <p>The development of this site for residential purposes is not considered likely to impact on existing or future opportunities within the zone for public recreation or the use of public open space.</p> <p>Therefore, impacts upon the public domain are considered acceptable. Further, standard conditions of consent would be imposed to ensure the adequate disposal of building and construction waste material.</p> <p><u>Social Impact</u> The development is considered satisfactory in terms of potential social impact in the locality considering the residential character of the proposal and that the development will provide greater diversity to the housing stock of the Northern Beaches LGA.</p> <p><u>Economic Impact</u> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

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 the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 27 submission/s from:

Name:	Address:
Ms Lynette Janice Rae	6 / 80 Old Pittwater Road BROOKVALE NSW 2100
Mrs Julia Ann Hunt	3 / 80 Old Pittwater Road BROOKVALE NSW 2100
Vanessa McDonald	11 / 80 Old Pittwater Road BROOKVALE NSW 2100
Kumiko Aoki	13 / 80 Old Pittwater Road BROOKVALE NSW 2100
Ms Kathryn Majella Farrelly	10 / 80 Old Pittwater Road BROOKVALE NSW 2100
Ben Sebastian Porter	4 / 82 B Old Pittwater Road BROOKVALE NSW 2100
Ms Linda Carole Austin	12 / 80 Old Pittwater Road BROOKVALE NSW 2100
Mrs Ahlison Adonay Rivera	9 / 80 Old Pittwater Road BROOKVALE NSW 2100
Ms Elizabeth Annette Johnston	7 / 80 Old Pittwater Road BROOKVALE NSW 2100
Ms Stacey Elizabeth Dawes	14 / 80 Old Pittwater Road BROOKVALE NSW 2100
Stacey Berkman	16 / 35 - 43 Dalley Street QUEENSCLIFF NSW 2096
Mr Chris John Reynolds	C/- Nolan Planning Consultants 75 Oliver Street FRESHWATER NSW 2096
The Owners Of Sp 71678	82 B Old Pittwater Road BROOKVALE NSW 2100
Ms Carson Lee McFarlane	4 / 80 Old Pittwater Road BROOKVALE NSW 2100
Vladislav Muzlantov	12 / 110 Lawrence Street FRESHWATER NSW 2096
Lisa Ann Johnstone	21 / 80 Old Pittwater Road BROOKVALE NSW 2100
Ms Aurelie Favennec	8 / 82 B Old Pittwater Road BROOKVALE NSW 2100
John Michael McParland	8/11-13 Avon Road DEE WHY NSW 2099
Ingham Planning Pty Ltd	19/303 Pacific Highway LINDFIELD NSW 2070
Mr Max Newman	5 / 80 Old Pittwater Road BROOKVALE NSW 2100
Karen Margaret Holdaway	19 / 80 Old Pittwater Road BROOKVALE NSW 2100
Ms Louise McMorland	9/82b Old Pittwater Rd BROOKVALE NSW 2100
Ms Cate Mary Moss	18 / 80 Old Pittwater Road BROOKVALE NSW 2100
Ms Susan Gai Frampton	22 / 80 Old Pittwater Road BROOKVALE NSW 2100
Anne Melissa Beath	11 / 82 - 82 Old Pittwater Road BROOKVALE NSW 2100
Mr Lance Errard Lindner	20 / 80 Old Pittwater Road BROOKVALE NSW 2100
Mr Barry Ernst Lindner	20 / 80 Old Pittwater Road BROOKVALE NSW 2100

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

- **Overshadowing**
- **Traffic and Parking Impacts**
- **Bin Room**



- Owners consent/right of way
- Landscaping
- Noise/Privacy Impacts
- Construction Impacts
- Devaluation of property
- Materials and Finishes
- Setbacks
- Building Bulk

The matters raised within the submissions are addressed as follows:

Overshadowing

Concern is raised regarding the level of overshadowing that will occur of the proposed private open space areas and adjoining properties private open space as a result of the proposed development. Particular concern is raised by the properties to the east of the subject site at No. 80 Old Pittwater Road.

Comment:

This issue has been addressed in detail elsewhere within this report (refer to Clause D6 Access to Sunlight under the WDCP 2011 section).

In summary the proposal, in this circumstance, allows for a reasonable level of sunlight access to be maintained to adjoining properties and to the private open space areas of the development.

This matter does not warrant refusal of the application.

Traffic and Parking Impacts

Concern is raised regarding the potential traffic and car parking impacts as a result of the proposed development. Particular concern is raised regarding the existing car parking issues associated with the right of carriageway running along the western boundary of the site.

Comment:

The on going and historical issue of cars parking along the western edge of the right of way causing obstruction is not a matter for Council to consider in its Assessment of this application as it is private land and a civil matter for those party to the easement to address. No further comment is made to this issue however Council encourages those party to the easement to explore options to satisfactorily resolve this historical issue between one another and seek independent legal advice.

It should be noted that traffic generation from the subject site as a result of this development will be considerably less than the existing childcare centre use.

Council's Traffic Engineer has reviewed the submitted Traffic Report and the proposed development and confirms that the traffic generated by the development will be within the environmental capacity of the local road network and will not have an adverse impact on the surrounding road network.

It is noted that a number of submissions raise concern regarding the required amount of car parking and that it is insufficient to serve this type of development. The requirements for car parking are calculated using the rates specified under Appendix 1 - Car Parking requirements of the WDCP 2011.



The development provides adequate off street car parking in accordance with the requirements specified under Appendix 1 - Car Parking Requirements of the WDCP and therefore the amount of car parking provided is deemed appropriate.

These matters do not warrant refusal of the application.

Bin Room

Concern is raised regarding the location of the bin room and potential amenity impacts on adjoining properties.

Comment:

The bin room is located at the front of the site within the front setback area. The bin room is semi-enclosed in order to minimise odour and the visual impact of the bin room when viewed from adjoining properties and the the public domain. The bin room is suitably screened by landscaping and setback approximately 5m from the eastern side boundary of the site adjoining other residential development.

The siting of the bin room is consistent with that of other medium density residential development in the local area and is considered to be satisfactory in this instance.

This matter does not warrant refusal of the application.

Owners consent/right of way

Concern is raised that the proposal will obstruct the existing right of way, that the works include the removal of treated pine sleepers and that works are proposed on the right of way that require owners consent. These concerns a raised by the properties to the north (SP71678 and SP72030)

Comment:

The proposal as originally submitted included landscaping within the right of way adjacent to the western boundary of the subject site. This landscaping has subsequently been removed from the plans and consent is no longer sought for this aspect of the proposal. Therefore there is no need for the consent of any land owners to the making of the application beyond the owners of the subject site.

The existing treated pine sleepers are an existing obstruction within the right of way which is a civil matter for the affected parties to resolve as is the existing and ongoing obstruction of the right of way by vehicles parking along the western edge.

There is no need for the consent of any additional land owners and therefore this matter does not warrant refusal of the application.

Landscaping

Concern is raised regarding the non compliance with Clause D1 Landscaped Open Space and Bushland Setting control under the WDCP 2011, that landscaping proposed is unsatisfactory and that trees are proposed to be removed.

Comment:

The matter of non compliance with Clause D1 Landscaped Open Space and Bushland Setting is addressed in detail elsewhere in this report (refer to Clause D1 Landscaped Open Space and Bushland



Setting under the WDCP 2011 section).

In summary, the assessment of this application has found that the development achieves consistency with the underlying Objectives of Clause D1 and the variation is supported in this instance.

Further, Council's Landscape Officer has reviewed the application and confirms that the proposed landscaping is satisfactory.

These matter do not warrant refusal of the application.

Noise/Privacy Impacts

Concern is raised regarding the potential privacy impacts as a result of the development. A particular concern has been raised regarding the impact of car headlights.

Comment:

This matter is addressed in detail elsewhere in this report (refer to Clause D8 Privacy under the WDCP 2011 section).

In summary, the proposal allows the maintenance of a reasonable level of visual and acoustic privacy for adjoining properties.

Further the issue of light spill from car headlights is controlled by way of side boundary fencing and the substantial landscaping proposed along the eastern boundary of the site.

This matter does not warrant refusal of the application.

Construction Impacts

Concern is raised regarding potential impacts as a result of any construction works.

Comment:

This matter has been addressed by a condition of consent contained within the Recommendation of this report.

The condition requires the preparation and implementation of a Construction Management Plan which will ensure construction impacts are effectively managed and minimised as a result of the proposed works.

In particular, the plan requires the implementation of an arrangement whereby there is no obstruction of the right of way throughout the construction phase.

This matter does not warrant refusal of the application.

Devaluation of property

Concern is raised that the proposed development will cause devaluation of adjoining properties.

Comment:

The devaluation of property is not a matter for consideration under the relevant planning legislation



applying to the application.

This matter does not warrant refusal of the application.

Materials and Finishes

Concern is raised regarding the proposed materials and finishes and their dark colour will not complement the surrounding area.

Comment:

The proposed materials and finishes are considered to be satisfactory and in keeping with that of surrounding and nearby residential developments. The colour palette of the development is a mix of dark and earthy tones and includes face brick which is suitable for its residential setting.

This matter does not warrant refusal of the application.

Setbacks and Building Envelope

Concern is raised regarding the developments non compliance with the building setback and building envelope controls.

Comment:

The matter of non compliance with the building setback controls applicable to the application under the WDCP 2011 are addressed in detail elsewhere within this report (refer to Clause B3 Side Boundary Envelope, Clause B5 Side Boundary Setbacks, Clause B7 Front Boundary Setbacks and Clause B9 Rear Boundary Setbacks under the WDCP 2011 section).

In summary, the assessment of this application has found that the development achieves consistency with the underlying Objectives of the relevant building setback and building envelope Clause's under WDCP 2011 and the variations are supported in this instance.

These matters do not warrant refusal of the application.

Building Bulk

Concern is raised regarding the bulk of the development.

Comment:

As detailed throughout this report the subject site is constrained due to its lot configuration and inability to consolidate with surrounding allotments given they have been developed for the purpose of medium density housing.

The spatial constraints of the site have been offset by way of the overall design of the building which includes substantial building articulation. The western and eastern building elevations include stepped wall planes and physical separation is provided between each 'group' of buildings.

The level of building articulation provided adequate visual relief and effectively reduces the visual bulk of the buildings when viewed from surrounding properties or public spaces.

Therefore the bulk of the buildings are considered to be satisfactory.



This matter does not warrant refusal of the application.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p><i>Note: The proposed development may not comply with some requirements of the BCA. Issues such as this however may be determined at Construction Certificate stage.</i></p>
Landscape Officer	<p>The application has been reviewed by Council's Landscape Officer who has provided the following comments:</p> <p><i>'The constraints of the narrow site are noted in relation to compliant setbacks. Based on the design proposed, the Landscape Plan submitted with the application is considered satisfactory.</i></p> <p><i>It is noted however that landscaping proposed along the western side of the development is on land outside of the property boundary. It is understood that there is an easement which may benefit the subject site, however if this is not the case or there are restrictions or covenants on the easement which would preclude planting due to the presence of services or drainage requirements, the landscape setting of the development would be significantly diminished and redesign would be recommended.</i></p> <p><i>Dependent on clarification of the above, no objections to approval are raised subject to conditions.'</i></p> <p><u>Assessment Officers Comment:</u></p> <p>The applicant has amended the proposal to remove any landscaping proposed within the right of way. The amended landscape plan indicates that that landscaping is still proposed along the western edge of the site between the boundary of the site and buildings. This landscaping is considered to be satisfactory and the application is supported in this instance.</p>
NECC (Development Engineering)	<p>The application has been reviewed by Council's Development Engineer who has provided the following comments:</p> <p><i>'The development is located in an area affected in the 1 in 100 year flood, therefore no OSD will be required. The development proposes to connect into Council's stormwater drainage pit in Old Pittwater</i></p>



Internal Referral Body	Comments
	<p>Road.</p> <p>Access to the proposed development is via an existing rights of carriageway.</p> <p>No Development Engineering objection is raised to the proposed development subject to conditions.'</p>
NECC (Stormwater & Floodplain Engineering – Flood risk)	<p>The application has been reviewed by Council's Flood Officer who has provided the following comments:</p> <p>'The proposal is generally in accordance with Clause 6.3 of the LEP and Part E11 of the DCP. No objections to approval subject to conditions.'</p>
Traffic Engineer	<p>The application has been reviewed by Council's Traffic Engineer who has provided the following comments:</p> <p>'The proposal is for five (5) townhouse style residential units with parking provision for 7 vehicles.</p> <p>The current parking situation with vehicles parking along the western side of the right of carriageway leading to 82-82A and 82B Old Pittwater Road is an identified issue that would be exacerbated with the proposed development. A parked vehicle along the right of way opposite to the proposed parking spaces would restrict manoeuvring space into each space. Such parking also limit vehicle passing opportunities within the right of way, and create a safety issue with vehicles forced to reverse in such a situation.</p> <p>As this right of way is not a public road, Council's Compliance is unable to enforce parking along this road. However there is scope for the landowner(s), owner's corporation(s) or community association(s) to consider appropriate signage and establish specific by-laws to control undesired parking. It is recommended that residents should consider independent legal advice before seeking this option.</p> <p>There are no objections to this development on traffic and parking grounds, however the ongoing parking issue along the right of carriageway should be considered by the planning assessment officer.'</p> <p><u>Assessment Officers Comment:</u></p> <p>The on going and historical issues with the right of way is a civil matter for those who are party to the easement to resolve. This is not a matter for the consent authority to consider as part of its assessment of the development application and no further comment is made in this regard.</p>
Waste Officer	<p>There are no objections to the approval of the application subject to conditions.</p>

External Referral Body	Comments



External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.799634SM dated Thursday, 04 May 2017).

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

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

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

SEPP (Infrastructure) 2007



Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.76m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
5.9 Preservation of trees or vegetation	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6.1m	N/A	Yes



B2 Number of storeys	2	2	N/A	Yes
B3 Side Boundary Envelope	East - 4m	Within envelope	N/A	Yes
	West - 4m	Breach on all Townhouses upto 1.65m in height	N/A	No
B5 Side Boundary Setbacks	East - 4.5m	2.004m to 4.04m	55.46%	No
	West - 4.5m	0.9m to building Nil to carport eave	80% 100%	No No
B7 Front Boundary Setbacks	6.5m	1.75m to garbage room 6.5m to carport (Townhouse 1)	73% N/A	No Yes
B9 Rear Boundary Setbacks	6m	Nil to car space 6.03m to Townhouse 5	100% N/A	No Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	50%	42.7% (371.92m ²)	14.43% (62.73m ²)	No

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: 38/40 x 100 = 95 then 100 - 95 = 5% variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B2 Number of Storeys	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C3(A) Bicycle Parking and End of Trip Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D19 Site Consolidation in the R3 and IN1 Zone	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes
Appendix 1 Car Parking Requirements	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance

The control requires development to be sited within the a building envelope of 4 metres and 45 degrees.

The proposed development breaches the side boundary envelope on the eastern elevation on all buildings at a maximum height of 1.65m.

Merit consideration

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

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

Comment:

The side boundary envelope breaches occur on the western elevation where the subject site has an interface with industrial zoned land. This interface is further extended by the right of way that runs along the western boundary of the site (in excess of 9 metres). The development complies with the side boundary envelope control on the eastern elevation where the site meets medium density residential housing.

The subject site is considerably constrained by way of its irregular lot configuration and historical isolation from redevelopment with adjoining sites to the north and west. The isolation of the subject site from the medium density developments to the north and west severely impacts the



design and siting of any future buildings subject site.

Therefore and as illustrated by the applicants submission (refer to 'Setbacks' Drawing No. PR-04 Issue A prepared by Alistair Robb), the developable area based on strict compliance with the numerical controls of this Clause and other Built Form Controls under WDCP 2011 would not allow for the reasonable development of the land.

The spatial constraints of the site have been offset by way of the overall design of the building which includes substantial building articulation. The western and eastern building elevations include stepped wall planes and physical separation is provided between each 'group' of buildings.

The level of building articulation provided adequate visual relief and effectively reduces the visual bulk of the buildings when viewed from surrounding properties or public spaces.

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

Comment:

The development is surrounded by industrial development to the west and residential flat buildings to the north and east. The development provides adequate physical separation between buildings to the west by virtue of the buildings setback proposed and the right of way running along the western boundary of the site.

The development proposes varying setbacks of 2.004m to 4.04m to the eastern side boundary which adjoins a residential flat building (No. 80 Old Pittwater Road). The building at No. 80 Old Pittwater Road is setback 4.5m from its western boundary. The combined separation between buildings is between 6.5m to 8.54m.

The development proposes a setback of 6.03m to the northern (rear boundary) which adjoins a residential flat building (No. 82-82A Old Pittwater Road). The building at No. 82-82A Old Pittwater Road is setback approximately 9.6m from its southern boundary. The combined separation between buildings is approximately 15.63m.

As detailed later within this report (refer to Clause D6 Access to Sunlight and Clause D8 Privacy under the WDCP 2011 section), the combined setbacks of the proposed development, the physical separation between buildings and design of the buildings will ensure a reasonable level of privacy, amenity and solar access is maintained.

The development satisfies this objective.

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

Comment:

The subject site is relatively flat without any topographical constraint. The development has sufficiently responded to the topography of the site by providing sufficient building articulation and



setbacks.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B5 Side Boundary Setbacks

Description of non-compliance

The control requires development to be setback a minimum 4.5m from the side boundary.

The development proposes the following setbacks to the side boundaries:

East

- 2.004m to 4.04m which equates to a variation of upto 55.46% (2.49m).

West

- 0.9m which equates to a variation of 80% (3.6m).
- Nil to carport eave which equates to a variation of 100% (4.5m).

Merit consideration

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

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

Comment:

The encroachment of the side boundary setback does not significantly reduce the development's ability to provide areas of deep soil landscaping. The assessment of the application has found the amount of landscaped open space to be satisfactory and an improvement on the existing provision of landscape areas.

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

Comment:

The subject site is constrained due to its lot configuration and inability to consolidate with surrounding allotments given they have been developed for the purpose of medium density housing. Therefore and as illustrated by the applicants submission (refer to 'Setbacks' Drawing No. PR-04 Issue A prepared by Alistair Robb), the developable area based on strict compliance with the numerical controls of this Clause and other Built Form Controls under WDCP 2011 would not allow for the reasonable development of the land.



The spatial constraints of the site have been offset by way of the overall design of the building which includes substantial building articulation. The western and eastern building elevations include stepped wall planes and physical separation is provided between each 'group' of buildings.

The level of building articulation provided adequate visual relief and effectively reduces the visual bulk of the buildings when viewed from surrounding properties or public spaces.

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

Comment:

As detailed above and throughout this report the design of the building incorporates adequate levels of building articulation and landscape elements that provide appropriate visual relief and will ensure the scale and bulk of the buildings is minimised when viewed from the street or surrounding properties.

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

Comment:

The development is surrounded by industrial development to the west and residential flat buildings to the north and east. The development provides adequate physical separation between buildings to the west by virtue of the proposed building/s setback and the right of way running along the western boundary of the site.

The development proposes varying setbacks of 2.004m to 4.04m to the eastern side boundary which adjoins a residential flat building (No. 80 Old Pittwater Road). The building at No. 80 Old Pittwater Road is setback 4.5m from its western boundary. The combined separation between buildings is between 6.5m to 8.54m.

The development proposes a setback of 6.03m to the northern (rear boundary) which adjoins a residential flat building (No. 82-82A Old Pittwater Road). The building at No. 82-82A Old Pittwater Road is setback approximately 9.6m from its southern boundary. The combined separation between buildings is approximately 15.63m.

As detailed later within this report (refer to Clause D6 Access to Sunlight and Clause D8 Privacy under the WDCP 2011 section), the combined setbacks of the proposed development, the physical separation between buildings and design of the buildings will ensure a reasonable level of privacy, amenity and solar access is maintained.

The development satisfies this objective.

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

Comment:



The development provides a reasonable sharing of views to and from public and private properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B7 Front Boundary Setbacks

Description of non-compliance

The control requires development to be setback a minimum 6.5m from the front boundary.

The proposed garbage room is setback 1.75m which represents a variation of 73% or 4.75m.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The variation is minor in nature and relates to a garbage room that is not fully enclosed and has a maximum height of 2.5m and a floor area of 8.5 sqm. The remainder and majority of the front setback area is landscaped and free of any structures which will ensure that a sense of openness is maintained across the front of site.

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

Comment:

The development will maintain and enhance the visual continuity and pattern of buildings and landscape elements in the local area. The garbage room is compatible with other medium density developments in the immediate vicinity of the site that are all located within the front setback area for ease of servicing. Further, the development allows for substantial areas of landscape elements within the setback area that will act to adequately screen the garbage bin room and development as a whole.

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

Comment:

There are a number of surrounding medium density developments that provide garbage bin rooms within the front setback area with minimal landscaping, entry ways or driveway areas



dominating the front setback area. In this instance and by way of vehicle access to the development being provided by the right of carriageway along the side boundary of the site, the development is able to provide significant areas of landscaping within the front setback area that is free of hard surface areas or buildings. This will result in an enhancement of the visual quality of the Old Pittwater Road streetscape and adjoining public spaces.

- *To achieve reasonable view sharing.*

Comment:

The development achieves a reasonable sharing of views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B9 Rear Boundary Setbacks

Description of non-compliance

The control requires development to have a minimum setback of 6m from the rear boundary.

The following rear setbacks are proposed:

- Nil to car space which equates to a variation of 100%.
- 2.56m to carport eave which equates to a variation of 58.33%.
- 6.03m to Townhouse 5.

Merit consideration:

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

- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment:

The assessment of this application has found the proposed development to provide adequate areas and opportunities for deep soil landscaping on site.

- *To create a sense of openness in rear yards.*

Comment:

The non compliance relates to a hard stand car space and an open carport structure that are located within the rear boundary setback area. The building is fully compliant with the minimum



rear boundary setback. The open nature of the hardstand space and carport structure will ensure that a sense of openness is maintained across the rear yard.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment:

The non compliance relates to non habitable areas of the development (car parking) which will have no impact on the amenity of the adjacent lands and in particular the maintenance of privacy between buildings.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

The rear of the site is adjoined by the driveway and entry way to the site to the north which is dominated by hard stand surfaces. The majority of the rear boundary setback area is to be landscaped and free of structures. In this regard the development maintains the existing visual continuity and pattern of buildings, rear gardens and landscape elements.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

As detailed above the non compliance relates to non habitable car parking areas of the development. The remainder and majority of the rear setback area is landscaped and free of any structures which ensures a reasonable level of privacy is maintained between dwellings.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The control requires a minimum 50% of the total site are to be landscaped open space.

The existing development provides 28.64% (249m²) of the total site area as landscaped open space. Note: The majority of this space is in the form of artificial turf give the current use of the site as a childcare centre.

The proposed development provides 42.7% (371.92m²) of the total site area as landscaped open space. This equates to a variation of 14.43% (62.73m²).



Merit consideration

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

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

Comment:

The Landscape Plan submitted with the application (refer to 'Landscape Plan Revision A' prepared by Zenith Landscape Designs dated 10/10/17) indicates that the front, side and rear setback areas have been designed to accommodate landscaping and planting which will maintain the the local streetscape character and assist to soften the visual impact of the development through the inclusion of a mix of planting including shrubs and small to medium sized trees.

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

Comment:

The site has been significantly altered over the course of its existence. There are no areas of threatened species, significant topographical features or vegetation identified on the site. The Landscape Plan indicates significant additional and replacement indigenous planting to be provided which vary in mature height from 2.5m to 7m.

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

Comment:

The proposed planting to be located within the front, side and rear setback areas includes a mix of shrubs and small to medium sized trees which achieve a mature height of between 2.5m to 7m. The spacing of the trees around the perimeter of the site softens the bulk of the building and, given the proposed heights and canopy spreads, will be of scale and density commensurate with the proposed building height, bulk and scale.

- *To enhance privacy between buildings.*

Comment:

The development includes areas of significant landscaping located around the perimeter of the site which, in-conjunction with the physical separation provided between buildings will provide adequate privacy screening. The landscape plan indicates small to medium sized trees to be planted around the perimeter of the site which achieve a height of between 2.5m to 7m at maturity which will further assist to provide adequate screening of the development to the surrounding and adjoining allotments.

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



occupants.

Comment:

Each of the proposed apartments have been provided with appropriate areas to support recreational opportunities to meet the needs of the dwelling occupants.

The apartments proposed on the ground floor will be served by courtyard areas located off the living areas. The apartments proposed on the first floor will be served by balcony areas of a appropriate area and dimension to suit the needs of future dwelling occupants.

In addition to the above, the site is located nearby to recreational areas such as parkland's within the Brookvale area including Council's Green Street Park/Playground to the south of the site. It is anticipated that occupants will utilise public facilities external to the property to meet active recreational needs that are not possible within the site.

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

Comment:

The plans submitted with the application indicate adequate space has been allocated for service functions, including clothes drying.

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

Comment:

The development has been reviewed by Council's Development Engineers having regard to the provisions for stormwater management and has raised no objections to the proposed stormwater system subject to conditions included in the recommendation of this report.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D6 Access to Sunlight

The control requires that '*at least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21*'.

A total of 72% of the of apartments in the two storey residential flat building to the west (No.80 Old Pittwater Road) are single aspect apartments.

A number of the single aspect apartments are located on the western side of the building and rely solely upon westerly sun (i.e. sunlight from 12 midday on wards) to provide access to direct sunlight.



This renders these apartments, in particular those on the ground floor, highly vulnerable to being overshadowed by any development on the subject site. The private open space areas of these ground floor apartments (Apartment Nos. 3, 5, 7 and 9) are also substantially burdened by self shadowing throughout the hours of 9am to 3pm on June 21 by virtue of their design and siting within the footprint of the building.

The ability to retain and protect sunlight to these properties is further restricted by the effective isolation of the subject site and its spatial constraints that does not allow for any redevelopment to occur in a fully compliant manner.

The shadow diagrams submitted with the application indicate that the private open space of the ground floor west facing apartments of No. 80 Old Pittwater Road will be impacted by the development. The shadow diagrams indicate that between the hours of 12 midday and 2.30pm on June 21 at least 50% of the private open space area of the adjoining dwellings will receive sunlight (2.5 hours).

Access to sunlight to the private open space of two of these apartments (Apartment No. 3 and No. 7) between 2.30pm and 3.00pm on June 21 is reduced to the extent that more than 50% private open space area is overshadowed. This effectively means that 2 out of the 22 apartments or a total of 9% of the apartments private open space areas do not obtain a minimum 50% of sunlight between 9am and 3pm on June 21 as per the requirements of this Clause.

As described above the west facing ground floor apartments of No. 80 Old Pittwater Road are considered to be highly vulnerable to overshadowing given their single aspect, design and location of private open space areas and the constraints of the subject site that burden any redevelopment. The vulnerability of the ground floor apartments to overshadowing extends to the extent that even a building that is fully compliant with side boundary setbacks (4.5m) would result in overshadowing of the private open space areas of the adjoining properties and a potential non compliance with the numerical requirements of this control.

In addition to the above, the proposal has been assessed against the planning principle outlined within the Land and Environment Court Case of *'The Benevolent Society v Waverley Council [2010] NSWLEC 1082'* and is considered reasonable in this instance.

For the reasons outlined above it is considered that a reasonable level of access to sunlight is provided to the adjoining properties private open space areas and the private open space areas of the proposed dwellings.

D8 Privacy

The buildings have been designed having regard to maintaining a reasonable level of privacy between buildings.

The buildings contain windows located on the ground and first floor elevations which serve stairwells or bathrooms which are not considered to be areas of high volume or use within a dwelling. These windows are narrow in width, high sill windows or finished in obscured glazing which limits the opportunity for direct or close overlooking into adjoining properties to occur.

In addition to the above the development includes substantial areas of landscaping along the western boundary of the site which at maturity will provide additional privacy screening.



The proposed development satisfies the objectives and requirements of this Clause.

Appendix 1 Car Parking Requirements

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Multi-dwelling housing	1 space per 1 bedroom dwelling 1.2 spaces per 2 bedroom dwelling 1.5 spaces per 3 bedroom dwelling 1 visitor space per 5 units or part of dwellings	5 x 2 bedrooms dwellings = 6 spaces 5 dwellings = 1 visitor space	6 spaces 1 visitor space	N/A
Total		7 spaces	7 spaces	N/A

Clause C3 of WLEP 2011 requires that adequate off-street car parking is to be provided within the subject property boundaries in accordance with the use provisions of Appendix 1. As detailed above the development provides sufficient on-site car parking. A condition has been included in the recommendation of this report relating to the allocation of spaces to ensure that 1 car space is allocated as a visitor space.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Warringah Section 94 Development Contributions Plan	
-----------------------------------------------------	--



Contribution based on a total development cost of \$ 1,297,586		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 12,327
Section 94A Planning and Administration	0.05%	\$ 649
Total	1%	\$ 12,976

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, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Northern Beaches Development Assessment Panel – Central as the consent authority grant Development Consent to DA2017/0636 for Demolition works and construction of a Multi Dwelling Housing Development on land at Lot 39 DP 778287, 39 / 0 Old Pittwater Road, BROOKVALE, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation



The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
PR-05 Issue A	May 2017	Alistair Robb
PR-06 Issue A	May 2017	Alistair Robb
PR-07 Issue A	May 2017	Alistair Robb
PR-08 Issue A	May 2017	Alistair Robb
PR-09 Issue A	May 2017	Alistair Robb
PR-10 Issue A	May 2017	Alistair Robb
PR-11 Issue A	May 2017	Alistair Robb
PR-12 Issue A	May 2017	Alistair Robb
PR-13 Issue A	May 2017	Alistair Robb
PR-14 Issue A	May 2017	Alistair Robb
PR-15 Issue A	May 2017	Alistair Robb
PR-16 Issue A	May 2017	Alistair Robb

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By

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

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
17-3409 LO1 Revision A	19/10/17	Zenith Landscape Designs
17-3409 LO2 Revision A	19/10/17	Zenith Landscape Designs

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

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

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)

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the



- erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches Council Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.



The following monetary contributions are applicable:

Northern Beaches Council Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 1,297,586.03		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 12,327.07
Section 94A Planning and Administration	0.05%	\$ 648.79
Total	1%	\$ 12,975.86

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with Northern Beaches Council's Development Contributions Plan.

5. **Security Bond**

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

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

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

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

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

6. **Works Bonds**

(a) Construction, Excavation and Associated Works Bond (Drainage)

A Bond of \$20000.00 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent.



(c) Construction, Excavation and Associated Works Bond (Crossing/Kerb)

A Bond of \$5000.00 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter and any footpath works required as part of this consent.

(d) Construction, Excavation and Associated Works Bond (Pollution)

A Bond of \$3000.00 as security to ensure that there is no transmission of material, soil etc off the site and onto the public road and/or drainage systems.

(3) Construction, Excavation and Associated Works Bond (Maintenance for civil works)

The developer/applicant must lodge with Council a Maintenance Bond of \$3000.00 for the construction of road works. The Maintenance Bond will only be refunded on completion of the Maintenance Period, if work has been completed in accordance with the approved plans to the satisfaction of Council.

(Note: This bond may be refunded and replaced by the Maintenance Bond upon submission to Council of the final Compliance Certificate or Subdivision Certificate.)

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

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

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

Reason: To ensure adequate protection of Council's infrastructure. (DACENZ01)

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

7. **Application for Stormwater Drainage & Road works Approval**

An application for stormwater drainage and road works approval under Section 138 of the Road Act is to be submitted with Council for the design and construction of the drainage system connection to Council pit in Old Pittwater Road and reinstate of kerb & gutter and footpath which is to be generally in accordance with the Stormwater Management Plan by Burgess, Arnott & Grava Pty. Ltd., drawing no 2017-020-H3 Rev B dated 20-04-2017 and Council's specification for engineering works - AUS-SPEC #1 and or Council's Minor Works Specification.

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

Reason: To ensure compliance with Council's specification for engineering works. (DACENC08)

8. **Waste Management Plan**

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

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



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

9. **Flood**

In order to protect occupants from flood inundation the following is required:

a) **Flood Protection**

All new building works and services shall be designed to withstand the hydraulic forces of the floodwaters up to the flood planning level of 17.1m AHD. Buoyancy (particularly in relation to cars), flowing water with debris, wave action, the flood compatibility of materials and waterproofing shall be addressed. Structural details for the construction are to be prepared by a suitably qualified Engineer.

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

Reason: To protect the building from flooding in accordance with Council and NSW Government policy. (DACNEC09)

10. **Compliance with Standards**

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

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

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

11. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

12. **Sewer / Water Quickcheck**

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

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

- Quick Check agents details - see Building Developing and Plumbing then Quick Check; and



- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- Or telephone 13 20 92.

Reason: To ensure compliance with the statutory requirements of Sydney Water.
(DACPLC12)

13. **Construction Management Plan**

A Construction Management Plan shall be submitted to the Certifying Authority prior to the issue of a Construction Certificate. The plan shall detail:

- (a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion, noise and dust in the area, with no access across public parks or reserves being allowed;
- (b) The proposed phases of construction works on the site, and the expected duration of each construction phase;
- (c) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- (d) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process.
- (e) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- (f) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- (g) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
- (h) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent;
- (i) Proposed protection for Council and adjoining properties;
- (j) The location and operation of any on site crane; and
- (k) The proposed methods of reducing dust and noise during construction.
- (l) Provisions to ensure that access along the right of way adjacent to the western boundary of the site is maintained at all times.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community.



CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land. (DACEND01)

15. **Tree protection**

(a) Existing trees which must be retained

- i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
- ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DACLAC01)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. **Civil Works Supervision**

All civil works approved in the Construction Certificate are to be supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works. (DACENE06)

17. **Maintenance of Road Reserve**

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety. (DACENE09)



18. Traffic Control During Road Works

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS, Traffic Control at Work Sites and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works.

Reason: Public Safety. (DACENE11)

19. Waste Management During Development

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifying Authority.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

20. Trees Condition

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.
- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

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

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

Reason: Protection of Trees. (DACLA03)

21. Waste/Recycling Requirements (Waste Plan Submitted)

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan.

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided. (DACWTE01)

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



22. **Reinstatement of Kerb**

All redundant laybacks and vehicular crossings shall be reinstated to conventional kerb and gutter, and concrete footpath or grassed verge as appropriate with all costs borne by the applicant.

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

Reason: To facilitate the preservation of on street parking spaces. (DACENF03)

23. **Required Planting**

Trees shall be planted in accordance with the following schedule:

No. of Trees Required.	Species	Location	Pot Size
All trees	As indicated on Landscape Plan Dwg No. LO1 dated 24.04.17 prepared by Zenith Landscape Designs	As indicated on the Landscape Plan	As indicated on the Landscape Plan

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

Reason: To maintain environmental amenity. (DACLAF01)

24. **Post-Construction Dilapidation Survey**

A post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at <https://www.warringah.nsw.gov.au/sites/default/files/documents/general-information/stormwater-and-development/2014-119050-guidelines-preparing-dilapidation-survey-council-stormwater-assets-april-2014.pdf>

The post construction dilapidation report must be submitted to the Council for review and the Certifying Authority prior to the issue of the Occupation Certificate. Any damaged to Council's stormwater infrastructure is to be rectified in accordance with Council's technical specifications prior to the release of the security bond.

Reason: Protection of Council's Infrastructure (DACNEF11)

25. **Certification of Drainage Works and Works as Executed Data**

A suitably qualified Civil Engineer shall certify that the completed works have been constructed in accordance with this consent and the approved Construction Certificate plans. Works as Executed data certified by a registered surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Stormwater Assets' shall be submitted to the Council for approval prior to the issue of the Occupation Certificate. Council's guidelines are available at <https://www.warringah.nsw.gov.au/sites/default/files/documents/general-information/stormwater-and-development/guideline-preparing-works-executed-data-council-stormwater-assets.pdf>



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

Reason: To ensure compliance of drainage works with Council's specification for engineering works. (DACNEF12)

26. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

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

Reason: To prevent pollution of the environment and to protect the amenity of the area. (DACPLF03)

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

The units within the development are to be numbered in accordance with the Australia Post Address Guidelines
(https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf).

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

(<https://www.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/unit-numbering-multi-unit-developments-residential-commercial-and-industrial-form/unit-numbering-multi-unit-developments-residential-commercial-and-industrial-form.pdf>).

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

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

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

Reason: To ensure consistent numbering for emergency services access. (DACPLF05)

28. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings. (DACPLF04)

29. **Waste Management Confirmation**



Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

30. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with Warringah Development Control Plan – Part C9 Waste Management

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

Reason: To ensure waste and recycling facilities are provided. (DACWTF01)

31. **Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled. (DACWTF02)

32. **Positive Covenant for Waste Services**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to provide access to the waste storage facilities prior to the issue of an Interim/Final Occupation Certificate. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities (DACWTF03)

33. **Authorisation of Legal Documentation Required for Waste Services**

The original completed request form (Department of Lands standard form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

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

Reason: To create encumbrances on the land. (DACWTF04)

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

34. **Landscape maintenance**

- i) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.
- ii) If any tree, shrub or groundcover required to be planted under this consent fails, they are



to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: To maintain local environmental amenity

35. **Allocation of Spaces**

Car parking spaces provided shall be provided, made accessible and maintained at all times. The spaces shall be allocated as follows:

6- Residential

1 - Residential - Visitors

Car-parking provided shall be used solely in conjunction with the uses contained within the development. Each car parking space allocated to a particular unit / tenancy shall be line marked and numbered or signposted to indicate the unit / tenancy to which it is allocated.

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

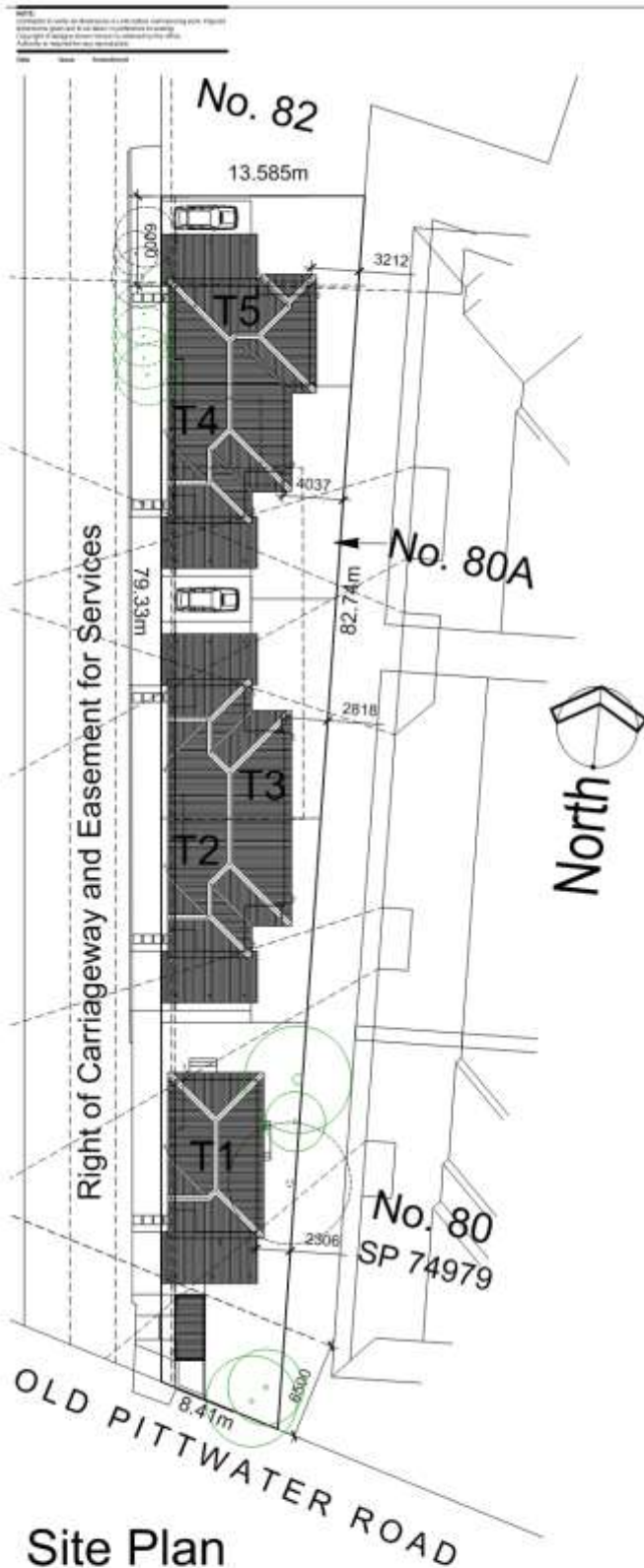
Reason: To ensure that adequate parking facilities to service the development are provided on site. (DACPLG01)

36. **Visitors Sign**

A sign, legible from the street, shall be permanently displayed to indicate that visitor parking is available on the site and the visitor car parking spaces shall be clearly marked as such.

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

Reason: To ensure that visitors are aware that parking is available on site and to identify those spaces to visitors. (DACPLG04)



Site Plan

Proposed Development:

Demolish existing Child Care Centre.
Construct 5 x New Townhouses & re-landscape site.

West Elevation



East Elevation



South

North

<div>alastair robb</div> <div><div><div></div><div>architect</div></div></div> <div>Reg No: 2008</div>		<div>27 New Line Road West Pymble NSW 2119</div> <div>T: 02 9615 0881 M: 0420 410 920 F: 0296150881@robb.net.au</div> <div>826 1235 3555 525</div>	<div>Hihati Pty Ltd</div> <div>82 Old Pittwater Road, Brookvale, NSW 2100 Lot 39, DP 778287</div>	<div>Notification</div>	<div>8261</div> <div>consent to only sit discussion on alternative concerning work figure</div> <div>if you are not satisfied with the outcome of the discussion, you may request a single issue decision to be issued by the council. Ask for a copy of the council's policy on this matter.</div> <div><div>Scale: 1:300@A3</div><div>Sheet: 17</div><div>Drawn: A</div><div>Checked: JM</div><div>Submitted: 04/05/2018</div></div>	<div>DEVELOPMENT APPLICATION</div> <div><div>Scale: 1:300@A3</div><div>Original Sheet Size: A3</div></div> <div><div>Date: May 2018</div><div>Drawing Number: PR-N1</div><div>Sheet: A</div></div> <div><div>Drawn By: JM</div><div>Checked By: JM</div></div> <div><div>Proj No:</div><div>Proj Title: May 2017</div></div> <div><div>File Name: 82 Old Pittwater Road May 2017.dwg</div></div>
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NOTES:
1. All elevations are to be finished to a standard consistent with the current practice of the Council.
2. All elevations are to be finished to a standard consistent with the current practice of the Council.
3. All elevations are to be finished to a standard consistent with the current practice of the Council.

West Elevation for Full Development

BASIX Commitments:

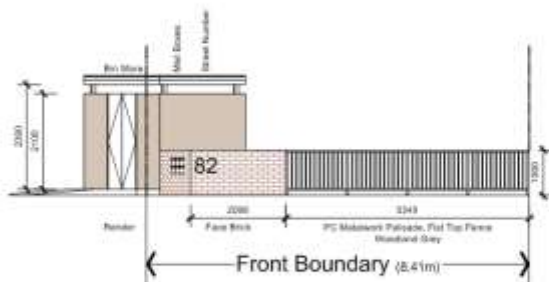
- Min. 11350 litre central rainwater tank collecting water from min. 200 sqm of roof & supplying all toilets, laundry & an outdoor tap in all dwellings.
- Insulated concrete slab with water seal (min. 5 store).
- Medium coloured roof.
- R4.0 bulk ceiling insulation.
- R3.0 bulk ceiling insulation.
- Overlights which penetrate the ceiling to be fitted with approved fireproof, non-ventilated covers allowing uninterrupted ceiling insulation.
- R1.0 insulation to ground level external walls (rating improved if all walls insulated).
- Weather stripping to external doors & windows.
- All windows to have specs (w 6.7 & SHGCw 0.57 (single clear glass in aluminium frames).
- Fixed, double hung & sliding windows & sliding floor doors to have specs (w 6.7 & SHGCw 0.7 (single clear glass in aluminium frames).



External Finishes

Roofing: Colorbond 'Gully' (BASIX Medium colour)	Gutter, Fascia & Downpipes: Colorbond 'Woodland Grey'
Soffit: Off White - Painted FC	FC Gables: Wattyl 'Old Papyrus' A75W
Rendered Walls: Wattyl 'Hessian' A89W	Window Frames: Dulux Powder-Coat 'Woodland Grey' Matt: 95951698
External SC Doors: Wattyl 'Woodland Grey' A28W	Face Brick Walls: Austral Metropolis Marcellite (NSW) Off White Mortar
Screens: Aluminium Slats Woodgrain Finish	

South / Street Elev (1:100)



alastair robb 27 New Line Road West Ryde NSW 2114 Tel: 02 9615 0001 M: 0420 410 920 F: 0296150001 Fax: 0296150002	Hihati Pty Ltd 82 Old Pittwater Road, Brookvale, NSW 2100 Lot 39, DP 778287	DEVELOPMENT APPLICATION Scale: 1:200 @ A3 Date: May 2018 Drawing Number: PR-08 Sheet: A Date: May 2017 File Name: 02 Old Pittwater Road May 2017.dwg
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NOTES:
1. All elevations are to be finished to a standard acceptable to the Council.
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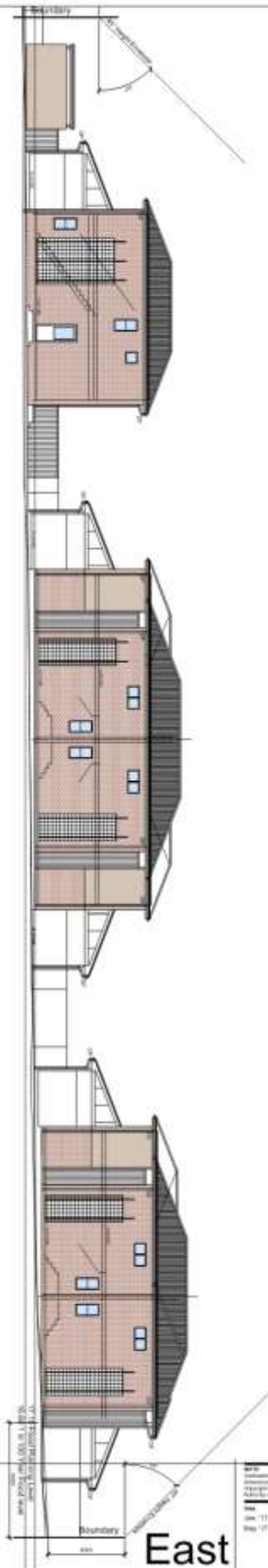
East Elevation for Full Development

BASIX Commitments:

- Min. 1150Ll litre central rainwater tank collecting water from min. 200 sqm of roof & supplying all toilets, laundry & an outdoor tap in all dwellings.
- Instantaneous gas hot water unit (min. 5.5L/min).
- Medium coloured roof.
- R1.0 bulk ceiling insulation.
- R1.0 bulk ceiling insulation under the roof (aircon or eqv).
- Downpipes which penetrate the ceiling to be fitted with approved freepipe, rain-ventilated covers allowing uninterrupted ceiling insulation.
- R1.0 insulation to ground level external walls (rating improved if all walls insulated).
- Weather stripping to external doors & windows.
- Awning windows to have specs like 6.7 & SHGCw 0.57 (single clear glass in aluminium frames).
- Fixed, double hung & sliding windows & sliding glass doors to have specs like 6.7 & SHGCw 0.7 (single clear glass in aluminium frames).

External Finishes

	Roofing: Colorbond 'Gully' (BASIX Medium colour)
	Gutter, Fascia & Downpipes: Colorbond 'Woodland Grey'
	Soffit: Off White - Painted FC
	FC Gables: Wattyl 'Old Papyrus' A75W
	Rendered Walls: Wattyl 'Hessian' A89W
	Window Frames: Dulux Powder-Coat 'Woodland Grey' Matt: 95951698
	External SC Doors: Wattyl 'Woodland Grey' A28W
	Face Brick Walls: Austral Metropolis Marcastle (NSW) Off White Mortar
	Screens: Aluminium Slats Woodgrain Finish



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Hihati Pty Ltd
22 Old Pittwater Road,
Brookvale, NSW 2100
Lot 39, DP 778287

NOTES:
1. All elevations are to be finished to a standard acceptable to the Council.
2. All elevations are to be finished to a standard acceptable to the Council.
3. All elevations are to be finished to a standard acceptable to the Council.

DEVELOPMENT APPLICATION
Scale: 1:200 @ A3
Date: May 2018
Drawing Number: PR-09
Sheet: A
Project: May 2017
File Name: 52 Old Pittwater Road May 2017.dwg

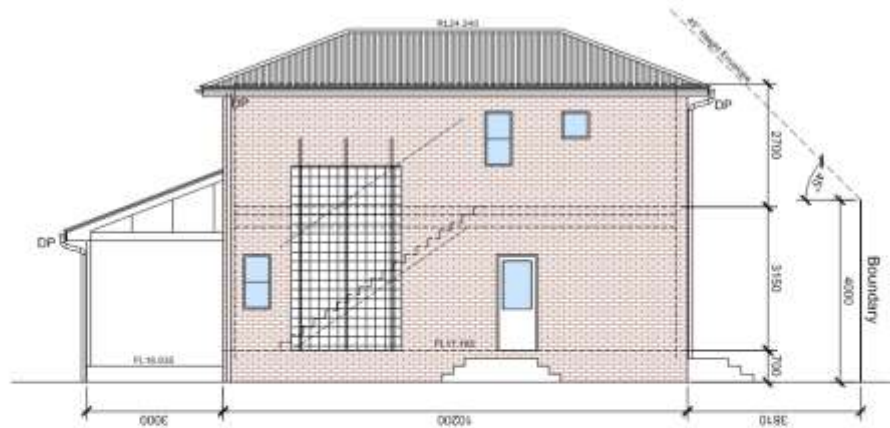
NOTES:
1. Elevation drawings are to be used in conjunction with the site plan and floor plan to determine the proposed building's appearance.
2. All dimensions are in millimetres unless otherwise stated.
3. All dimensions are to the face of the building unless otherwise stated.

External Finishes

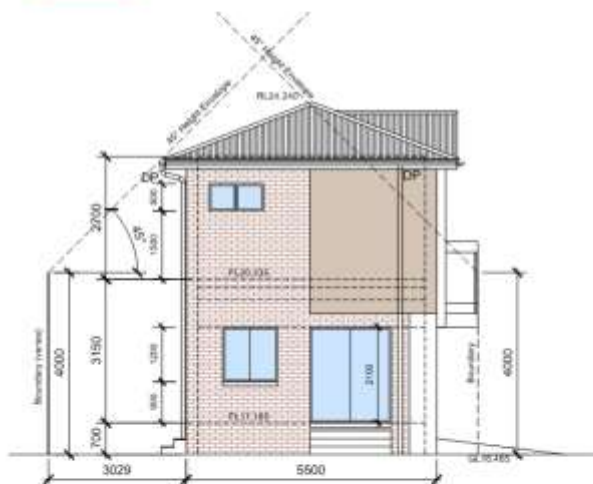
Roofing: Colorbond 'Gully' (B&B Medium colour)	Roofing: Colorbond 'Gully' (B&B Medium colour)
Outer, Facade & Downpipes: Colorbond 'Woodland Grey'	Outer, Facade & Downpipes: Colorbond 'Woodland Grey'
Self: OF White - Painted FC	Self: OF White - Painted FC
FC Gables: Wet 'Old Papaya' ANW	FC Gables: Wet 'Old Papaya' ANW
Rendered Walls: Wet 'Tender' ANW	Rendered Walls: Wet 'Tender' ANW
Window Frames: Dux Powder-Coat 'Woodland Grey' Mat: 9005/9036	Window Frames: Dux Powder-Coat 'Woodland Grey' Mat: 9005/9036
External GC Doors: Wet 'Woodland Grey' ANW	External GC Doors: Wet 'Woodland Grey' ANW
Face Brick Walls: Aerial Medicine Marine (100) OF White Mortar	Face Brick Walls: Aerial Medicine Marine (100) OF White Mortar
Screens: Aluminium Slat Woodgrain Finish	Screens: Aluminium Slat Woodgrain Finish



West Elevation: T1



East Elevation: T1

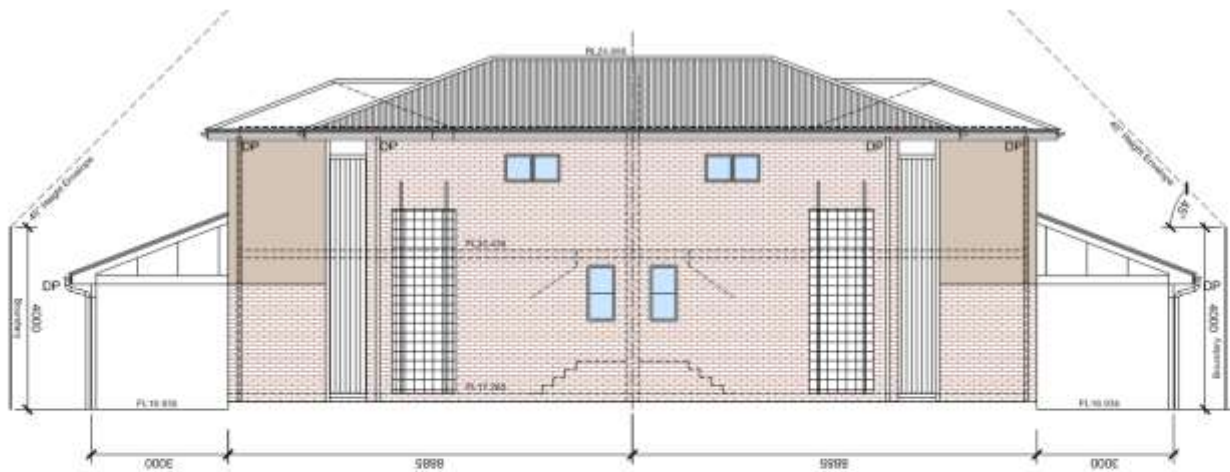


North Elevation: T1

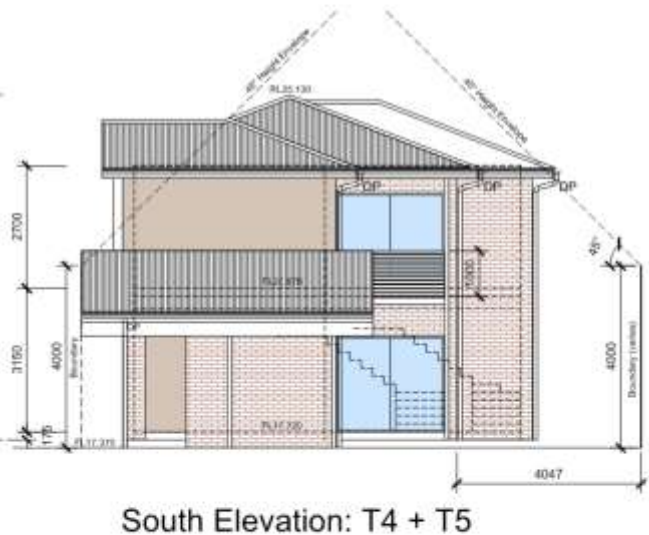
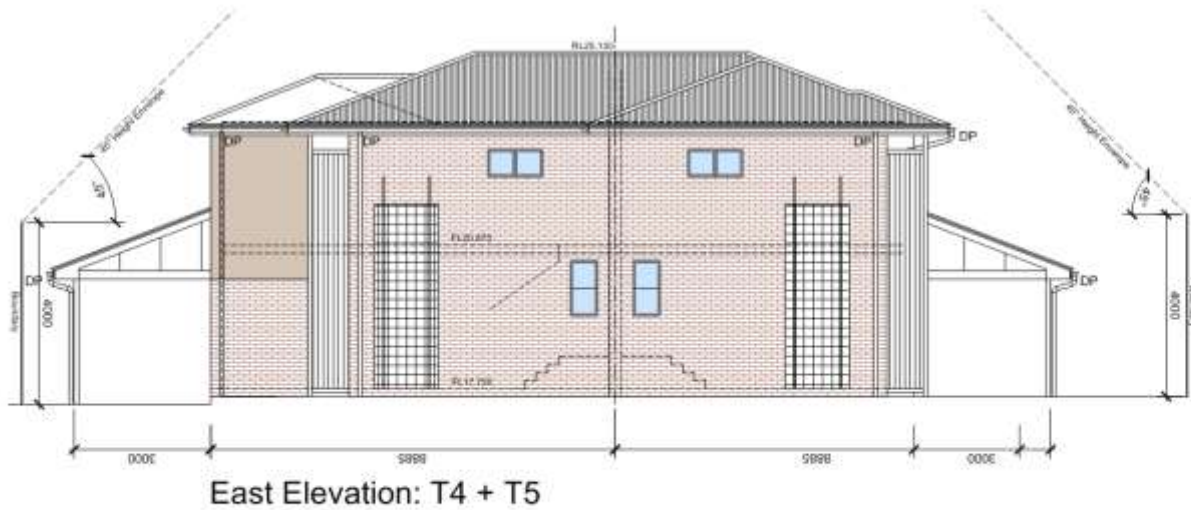


South Elevation: T1

alastair robb 27 New Line Road Brookvale NSW 2100 Tel: 02 9375 0001 Fax: 02 9375 0002 Email: alastair@alastairrobb.com.au	Hihati Pty Ltd 82 Old Pittwater Road, Brookvale, NSW 2100 Lot 39, DP 778287	Elevations T1	DEVELOPMENT APPLICATION Scale: 1:100 @ A3 Date: May 2018 Drawing Number: PR-12 Sheet: A Project: May 2017 File Name: 02 Old Pittwater Road May 2017.dwg
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<p>alastair robb architect</p> <p>27 New Line Road West Pymble NSW 2118</p> <p>T: 02 9611 0001 M: 0420 411 920 F: 02 9611 0001</p> <p>Reg No: 2008</p>	<p>Hihati Pty Ltd</p> <p>82 Old Pittwater Road, Brookvale, NSW 2100 Lot 39, DP 778287</p>	<p>Elevations T2/T3</p>	<p>Notes: 1. All elevations to be constructed in accordance with the approved plans and specifications. 2. All elevations to be constructed in accordance with the approved plans and specifications. 3. All elevations to be constructed in accordance with the approved plans and specifications.</p> <p>Scale: 1:100 @ A3</p> <p>Drawn: May 2018 Check: May 2018 Date: May 2018</p>	<p>DEVELOPMENT APPLICATION</p> <p>Scale: 1:100 @ A3</p> <p>Drawn: May 2018 Check: May 2018 Date: May 2018</p> <p>PR-14 A</p>
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<p>alastair robb architect</p> <p>27 New Line Road West Pymble NSW 2118</p> <p>T: 02 9611 0801 M: 0430 411 932 F: 0296110801@robb.arch</p> <p>Reg No: 2008</p>	<p>Hihati Pty Ltd</p> <p>82 Old Pittwater Road, Brookvale, NSW 2100 Lot 39, DP 778287</p>	<p>Elevations T4/T5</p>	<p>Scale: 1:100 @ A3</p> <p>Drawn by: DM</p> <p>Check by: A</p> <p>Date: May 2017</p>	<p>DEVELOPMENT APPLICATION</p> <p>Scale: 1:100 @ A3</p> <p>Drawn by: DM</p> <p>Check by: A</p> <p>Date: May 2017</p> <p>PR-16 A</p>
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ITEM 3.2	N0421/17 - 4 THE CHASE LOVETT BAY - DEMOLITION OF AN EXISTING DWELLING AND CONSTRUCTION OF A NEW DWELLING
REPORTING OFFICER	REBECCA ENGLUND
TRIM FILE REF	2018/167835
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. N0421/17 for Demolition of an existing dwelling and construction of a new dwelling at Lot 100 DP 1159901, 4 The Chase, Lovett Bay for the reasons outlined in the Assessment Report.

N0421/17 – 4 The Chase, Lovett Bay NSW 2105
Demolition of an existing dwelling and construction of a new dwelling

SUMMARY OF RECOMMENDATION:	APPROVAL
APPLICATION SUBMITTED ON:	18 September 2017
APPLICATION SUBMITTED BY:	Fergus & Lesley Scott
OWNER:	Fergus & Lesley Scott
COST OF WORKS:	\$1,675,400.00
NO. OF SUBMISSIONS:	24
DETERMINATION LEVEL:	Local Planning Panel

1.0 SITE DETAILS

The site is legally described as Lot 100 in Deposited Plan 1159901, and is commonly referred to as 4 The Chase, Lovett Bay ('the site'). The site is an irregular shape, with a 15m (approximately) wide frontage to the Pittwater Waterway, a maximum depth of approximately 88m and a total area of 2,628m². The site currently contains a single storey dwelling, a detached outbuilding and a tennis court. A jetty and pontoon, located below MHW, are also associated with the site and covered by an existing Licence agreement. There are a number of existing canopy trees located on the site, predominately located within the foreshore area, between the existing dwelling and the MHW. The site experiences a fall of approximately 20m, from the upper rear boundary towards the water, with an average slope of approximately 15%, increasing to a maximum slope of approximately 90% within the foreshore area.



Figure 1 - Aerial image with lot outlined in light blue
Source: Jacobs & Aerometrex 2016 Aerial Imagery

The primary means of access to the site is via the Pittwater Waterway; however pedestrian access is achievable through Ku-ring-gai Chase National Park at the rear, where an informal track/fire trail provides access around to Halls Wharf, being the nearest public wharf. The site is within a small cluster of 8 dwellings that are situated quite close together, on a small point, and are bounded by the National Park and the Pittwater Waterway.

2.0 PROPOSED DEVELOPMENT

The application seeks consent for the following development to the site;

- Demolition of the existing dwelling,
- Retention of the existing outbuilding,
- Construction of a new 1-2 storey dwelling,
- Installation of an inclinor,
- Installation of a new wastewater system, and
- Tree removal and landscaping.

At the time that the application was originally lodged, the application also sought consent for the retention of the existing tennis court and new boundary fencing. The applicant has since amended the application to remove the existing tennis court and no longer seeks consent for any new fencing.

Note: the plans provided to support the application demonstrate a boatshed that straddles the MHW. This boatshed was approved pursuant to Development Consent N0245/07 and does not form part of the subject application.

3.0 LEGISLATION, PLANS AND POLICIES

The following planning legislation, environmental planning instruments, development control plans and policies are relevant to the subject application:

- Environmental Planning and Assessment Act 1979 ('the EP&A Act')
- Environmental Planning and Assessment Regulation 2000 ('the EP&A Regulations')
- Biodiversity Conservation Act 2016
- Pittwater Local Environmental Plan 2014 ('PLEP 2014')
 - Height of Buildings Map – 8.5m
 - Acid Sulphate Soils – Class 5
 - Biodiversity Map
 - Foreshore Building Line Map
 - Geotechnical Hazard Map – H1
 - Minimum Lot Size Map – 11,000m²
- Draft Amendments to Pittwater Local Environmental Plan 2014 ('Draft PLEP 2014')
- Pittwater 21 Development Control Plan ('P21 DCP')
 - Lower Western Foreshores and Scotland Island Locality
 - Geotechnical Risk Management Policy for Development in Pittwater
 - Coastline Risk Management Policy for Development in Pittwater
 - Estuarine Risk management Policy for Development in Pittwater
 - Bushfire Prone Land
 - Pittwater Spotted Gum Forest Endangered Ecological Community ('PSG EEC')
- State Environmental Planning Policy No. 71 – Coastal Protection ('SEPP 71')
- Draft State Environmental Planning Policy – Coastal Management ('Draft Coastal SEPP')
- 10/50 Vegetation Clearing Code of Practice ('10/50 Code')
- Protection of the Environment Operations Act ('PEO Act')
- NSW EPA Industrial Noise Policy
- NSW EPA Noise Policy for Industry
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 ('SEPP Exempt and Complying')

5.0 PERMISSIBILITY

The site is zoned E3 Environmental Management under the provisions of PLEP 2014. Pursuant to the land use table in Part 2 of this instrument, the construction of a dwelling is permissible with consent.

6.0 BACKGROUND

Background of Site

On 2 August 2007, Development Application N0245/07 for the construction of a new boatshed with skid and the replacement of existing jetty, ramp, pontoon and stabilising piles was approved by Council.

On 31 March 2008, a partial Construction Certificate was issued with respect to the replacement of the jetty, ramp, pontoon and stabilising piles approved pursuant to N0245/07. A Notice of Commencement was also received on this date.

Background of Application

On 18 September 2017, the application was lodged with Council and subsequently referred to Council's Development Engineer, Natural Environment Officer, and Environmental Health team for comments and/or recommendations.

On 21 December 2017, correspondence was sent to the applicant identifying a number of issues preventing the approval of the application. The issues included:

- Landscaped area non-compliance
- Extent of site disturbance
- Landscaping detail
- Capacity and availability of water tanks
- Character, bulk and scale
- Impacts associated with the inclinor
- Extent of fencing
- Impacts upon canopy trees
- Bushfire risk

On 29 January 2018, the applicant responded to Council's correspondence with a full suite of amended plans and additional technical documentation and certification.

On 12 February 2018, further additional information was provided from the Applicant.

On 28 February 2018, further clarification was received from the Applicant with regards to impacts upon canopy trees to be retained.

7.0 ADVERTISEMENT AND NOTIFICATION

The application was notified for a period of 14 days from 22 September through to 6 October 2017 in accordance with Council's Notification Policy and the EP&A Regulations. During this time, 28 submissions were received from and on behalf of 24 residences/entities as follows:

1	Gottche, Brenda & Graham	1 The Chase, Lovett Bay
2	Appleton, Geoff	15 Portions, Lovett Bay
3	Roberts, Greg & Louise	5 Florence Terrace, Scotland Island
4	Hawke, Robert	7 The Chase, Lovett Bay
5	Bryson, John and Therese	3 The Chase, Lovett Bay
6	Murphy, Gayle & Peirce, Les	14 Portions, Lovett Bay

7	Yuille, Alan	(address not disclosed)
8	Ritchie, Ian & Joanne	2 The Chase, Lovett Bay
9	McVeigh, Chris & Tessa	(address not disclosed)
10	Loewenthal, Hugh & Heather	5 The Chase, Lovett Bay
11	Goold, Chris	15 17 Robertson Road, Scotland Island
12	Knox, Jennifer & Stevelt, Hans	20 Portions, Lovett Bay
13	Bohorques Florez, Gloria	12 Portions, Lovett Bay
14	Burns, Stephen	(address not disclosed)
15	Dusseldorp, Edwina	8 Bona Crescent, Lovett Bay
16	Croft, A	12 The Chase, Lovett Bay
17	Michael Blakeney Architect	(address not disclosed)
18	Bjerre, Carmen & Pate, Stuart	6 The Chase, Lovett Bay
19	Wallace, Susan	1 Bona Crescent, Lovett Bay
20	Jobson, Jane	(address not disclosed)
21	Whitford, Keturah	8 The Chase, Lovett Bay
22	West Pittwater Community Association	(address not disclosed)
23	Lahm, June	21 Robertson Road, Scotland Island
24	Akerman, Piers	16 Bona Crescent, Towlers Bay

The submissions were in objection to the proposed development and raised specific concern with regard to:

- Visual impact,
- Tree removal (previous and proposed),
- Inconsistency with desired future character,
- Extent of fencing,
- RFS/Emergency access,
- Pedestrian access to the foreshore,
- Bulk and scale,
- Height,
- Landscape area calculations,
- Extent of site disturbance,
- Inconsistency with the E3 Environmental Management zoning,
- Landscaping and species selection,
- Extent of excavation,
- Inconsistency with covenants, right of carriageways and restrictions on title,
- Wastewater management,
- Construction methodology and impacts associated with construction,
- Deficiencies in information provided,
- Impacts associated with the inclinometer,
- Solar access,
- Visual privacy, and
- Runoff and drainage.

These issues are identified against the relevant development standard/control in the compliance table and are individually addressed in the discussion section, below.

Following the receipt of additional information, 1 further submission was received reiterating concerns regarding pedestrian access across the site.

8.0 KEY ASSESSMENT ISSUES

- Character, bulk and scale
- Landscaped Area

9.0 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?

Control	Standard	Proposal	T	O	N
Pittwater Local Environmental Plan 2014					
1.9A Suspension of covenants, agreements and instruments		See discussion.	Y	Y	N
2.7 Demolition requires development consent			Y	Y	Y
Zone E3 Environmental Management		See discussion.	Y	Y	N
4.3 Height of Buildings	8.5m above ground	8.4m above ground See discussion.	Y	Y	N
5.5 Development within the coastal zone		See discussion.	Y	Y	N
5.10 Heritage conservation			Y	Y	Y
7.1 Acid sulphate soils			Y	Y	Y
7.2 Earthworks			Y	Y	Y
7.6 Biodiversity		See discussion.	Y	Y	N
7.7 Geotechnical hazards			Y	Y	Y
7.8 Limited development on foreshore area		See discussion.	Y	Y	N
7.10 Essential services		See discussion.	Y	Y	N
Pittwater 21 Development Control Plan					
A1.7 Considerations before consent is granted		See discussion.	Y	Y	N
A4.8 Lower Western Foreshores and Scotland Island Locality		See discussion.	Y	Y	N
A5.1 Exhibition, Advertisement and Notification			Y	Y	Y
B1.3 Heritage Conservation – General			Y	Y	Y
B1.4 Aboriginal Heritage Significance			Y	Y	Y
B3.1 Landslip Hazard			Y	Y	Y
B3.2 Bushfire Hazard		See discussion.	Y	Y	N
B3.6 Contaminated Land and Potentially Contaminated Land			Y	Y	Y
B3.7 Estuarine Hazard – Low Density Residential		See discussion.	Y	Y	Y
B4.7 Pittwater Spotted Gum Forest – Endangered Ecological Community		See discussion.	Y	Y	N
B4.15 Saltmarsh Endangered Ecological Community			Y	Y	Y
B4.16 Seagrass Conservation			Y	Y	Y
B4.19 Estuarine Habitat			Y	Y	Y
B4.20 Protection of Estuarine Water Quality			Y	Y	Y
B5.4 Stormwater Harvesting		See discussion.	Y	Y	N
B5.6 Rainwater Tanks – Water Supply		See discussion.	Y	Y	Y
B5.8 Stormwater Management – Water Quality			Y	Y	Y
B5.11 Stormwater Discharge into Waterways and Coastal Areas			Y	Y	Y
B5.13 Development on Waterfront Land			Y	Y	Y
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

Control	Standard	Proposal	T	O	N
B8.5 Construction and Demolition Works in the Public Domain			Y	Y	Y
C1.1 Landscaping		See discussion.	Y	Y	N
C1.2 Safety and Security			Y	Y	Y
C1.3 View Sharing		See discussion.	Y	Y	N
C1.4 Solar Access		See discussion.	Y	Y	N
C1.5 Visual Privacy		See discussion.	Y	Y	N
C1.6 Acoustic Privacy		See discussion.	Y	Y	N
C1.7 Private Open Space			Y	Y	Y
C1.9 Adaptable Housing and Accessibility			Y	Y	Y
C1.12 Waste and Recycling Facilities			Y	Y	Y
C1.13 Pollution Control	Compliance with the NSW EPA Industrial Noise Policy.	See discussion.	Y	Y	N
C1.14 Separately Accessible Structures		See discussion.	Y	Y	Y
C1.19 Incline Passenger Lifts and Stairways		See discussion.	Y	Y	N
C1.23 Eaves			Y	Y	Y
D8.1 Character as viewed from a public place		See discussion.	Y	Y	N
D8.3 Building Colours and Materials		See discussion.	Y	Y	N
D8.5 Front Building Line	FSBL applies.	The site does not present to a street. See FSBL for setback to waterway.			
D8.6 Side and Rear Building Line	Sides: 1m & 2.5m Rear: 6.5m	SW side: 2.7m E side: 5m to dwelling 1m to shed NW rear: 27.2m	Y	Y	Y
D8.8 Building Envelope			Y	Y	Y
D8.9 Landscaped Area		See discussion.	N	Y	N
D8.10 Fences		See discussion.	Y	Y	N
D8.11 Construction, Retaining Walls, Terracing and Undercroft Areas		See discussion.	Y	Y	N
D8.12 Companion Animals			Y	Y	Y
D8.13 Stormwater Overflow			Y	Y	Y
D8.15 Site Disturbance			Y	Y	N
D15.15 Waterfront Development		See discussion.			N
SEPP No.71 Coastal Protection		See discussion.	Y	Y	Y
Draft Coastal Management SEPP			Y	Y	Y
EPA Act 1979 No 203 section 147 Disclosure of political donations and gifts			Y	Y	Y
SEPP BASIX			Y	Y	Y

10.0 DISCUSSION OF ISSUES

Covenants and Restrictions on Title

- **Clause 1.9A (Suspension of covenants, agreements and instruments) of PLEP 2014**

A portion of the site (the rear of the site formally known as Lot 6 in Deposited Plan 542698) is burdened by a restriction on title, as follows:

- *that no more than one main building shall be erected on any of the allotments*
- *that no main building shall be erected on any of the allotments at a less value than \$10,000.00*
- *that no face of the exterior walls of any such main building shall be constructed of red brick*
- *that until the subject allotments are connected to a sewerage main, no sanitary convenience, other than a septic tank system shall be erected or installed on any such allotment*
- *that no paling fence shall be erected on any boundary of any of the allotments*
- *that the Transferor shall not be required to contribute to the cost of any fence to be erected on any allotment to divide it from adjoining land*

There are also 2 separate covenants to the same effect regarding fencing and the erection of one dwelling house (H436531 and L875815).

Submissions have been received in objection to the fencing and the pavilion-style design of the dwelling, and alleged non-compliance with the terms of the restriction on title.

Under the provisions of clause 1.9A of PLEP 2014, a restrictive covenant that restricts the carrying out of development in accordance with PLEP 2014 does not apply to the extent necessary to serve that purpose. The development of the site for the purpose of a dwelling house, and development ordinarily ancillary to a dwelling house (such as fencing), is consistent with the development anticipated by PLEP 2014, and as such, this clause would provide the mechanism for the development to proceed, despite inconsistency with any restrictive covenant.

However, with respect to fencing, the application has subsequently been amended and fencing is no longer proposed. As such, the proposal is not inconsistent with the restriction against fences. Furthermore, whilst the proposed pavilion style design might include multiple buildings, the proposed development only proposes one main building, with the smaller existing shed/gym being ancillary to the primary dwelling, and as such, the proposal is not inconsistent with the restriction limiting the site to only one main building.

Building Height

- **Clause 4.3 (Height of buildings) of PLEP 2014**

The proposed new dwelling reaches a maximum height of 8.4m above existing ground level at the south-eastern corner of the upper skillion roof. Whilst a number of submissions have been received in objection to the height of the proposed new dwelling, the development is both consistent with the maximum height prescribed by clause 4.3 of PLEP 2014 and the objectives of the maximum height development standard, as follows:

- (a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

Comment: The desired future character of the Lower Western Foreshores and Scotland Island locality is prescribed by clause A4.8 of P21 DCP. With respect to height and scale, the desired character statement prescribes

that "dwelling houses to be limited to a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape" and that "future development will maintain a building height limit below the tree canopy and minimise bulk and scale". The proposed new dwelling is considered to be consistent with the desired character statement in this regard, with the appearance of a 1-2 storey dwelling as seen from the waterway, maintained below the canopy of existing and proposed trees.

Furthermore, the built form is well articulated, with tiered awnings and roof forms to break down the scale of the building, which are complimented by the proposed use of dark and earthy colours and materials to ensure that the building will appear secondary to landscaping.

- (b) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment: The applicant has provided a comprehensive Context Analysis Statement that compares the proposed built form with that of surrounding and nearby dwellings and that demonstrates that the height and scale of the proposed development is not dissimilar with other dwellings within the Lower Western Foreshores and Scotland Island locality. The applicant has also provided a photomontage of the proposed development as seen from the waterway, which demonstrates that the proposed dwelling will be compatible with the height and scale of surrounding and nearby low density, 1-2 storey residential development.

- (c) *to minimise any overshadowing of neighbouring properties,*

Comment: The height of the building does not attribute to any unreasonable overshadowing impacts upon adjoining properties (see further discussion regarding solar access).

- (d) *to allow for the reasonable sharing of views,*

Comment: The height of the building does not attribute to any unreasonable impacts upon views from adjoining properties (see further discussion regarding view sharing).

- (e) *to encourage buildings that are designed to respond sensitively to the natural topography,*

Comment: With the exception of a small amount of excavation associated with the proposed cellar, the proposed new dwelling is sited at or slightly above existing ground levels, and overall, the design of the new dwelling is considered to respond sensitively to the natural topography.

- (f) *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Comment: Whilst the proposed dwelling has been sited with its longest/widest facade presenting to the waterway, the design is well articulated to ensure that the bulk and scale of the development is reasonably minimised. Furthermore, the proposal incorporates the use of dark and earthy colours, and will be softened by landscaping, to ensure that the resultant dwelling will not have an adverse visual impact on the natural environment.

Coastal Zone

- **Clause 5.5 (Development within the coastal zone) of P21 DCP**
- **State Environmental Planning Policy No.71 – Coastal Protection**
- **Draft State Environmental Planning Policy – Coastal Management**

One of the objectives of SEPP 71 and clause 5.5 of PLEP 2014 is to *"ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area"*. Submissions have been received in objection to the development, stating that the bulk and scale of the development is not appropriate for the foreshore location and that the design of the development does not improve the natural scenic quality of the Western Foreshores locality.

The proposed new dwelling is comprised of 3 pavilions, of differing size and scale, which are located generally centrally on the site. The primary pavilion, containing 2 bedrooms, 2 bathrooms and an open plan living area, is 1-2 storeys in height with a small below ground cellar. The front (southern) facade of the primary pavilion is well modulated, with awnings of differing widths/depths to create shadows and break down the apparent size of the building. The design incorporates natural materials and dark colours, which also actively assist in reducing the visual impact of the proposal. The design of the dwelling is maintained below the maximum height and building envelope plane, with side setbacks in excess of those prescribed. The footprint of the dwelling is also consistent with that anticipated by P21 DCP in consideration of the size of the site. The applicant has also demonstrated that the size and scale of the proposed new dwelling is both consistent and compatible with other dwellings within the Lower Western Foreshores Locality, and overall, Council should be satisfied that the bulk, scale and size of the proposed dwelling is appropriate for its location.

The landscape plan provided to support the application also demonstrates a considerable increase in native vegetation compared to that which currently existing on the site, and overall, the proposed new dwelling will protect and improve the natural scenic quality of the area.

The assessment has considered the matters outlined in Part 2 of clause 5.5 of PLEP 2014, and Council can be satisfied that:

- the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and
- effluent from the development will not have a negative effect on the water quality of Pittwater,
- the proposed development will not discharge untreated stormwater into Pittwater, and
- the proposed development will not:
 - o be significantly affected by coastal hazards, or
 - o have a significant impact on coastal hazards, or
 - o increase the risk of coastal hazards in relation to any other land.

Overall, the proposal is consistent with the provisions of SEPP 71 and clause 5.5 of PLEP 2014.

Foreshore Building Line

- **Clause 7.8 (Limited development on foreshore area) of PLEP 2014**

The foreshore building line dissects the site at a distance of approximately 24.5m from MHWL on the western side boundary and 21m from MHWL on the eastern side boundary, as shown on the Foreshore Building Line Map of PLEP 2014.

The application seeks consent for works seaward of the foreshore building line, within the foreshore area, including new pedestrian access stairs, terracing, retaining walls, and

landscaping. These works are consistent with the permissible purposes identified by Part 2(b) of this clause, being waterway access stairs, walking trails and works associated with and ancillary to such purposes.

The application also proposes an inclinator that extends through the foreshore area and up to the dwelling. Whilst an inclinator is not specifically nominated as a permissible use under the provisions of Part 2(b) of this clause, nor is it defined in the dictionary of PLEP 2014, an inclinator is an alternate option to the waterway access stairs, and is considered to be reasonably described as being ancillary to the approved boatshed and waterfront facilities, as it provides a more direct and accessible connection from the primary access point and boatshed up to the dwelling, which is located at a level approximately 11m higher (uphill) and at a distance of approximately 35m from the boatshed.

Wastewater treatment and holding tanks are also proposed within the foreshore area. Wastewater treatment and holding tanks are systems that are ancillary to the primary dwelling, which are only permitted within the foreshore area if they replace an existing development wholly or partly within the foreshore area, and if the levels, depth or other exceptional features of the site make it appropriate to do so. Pursuant to the Draft PLEP 2014, any new/replacement development shall not extend any further seaward than that which currently exists on the site. The proposed wastewater treatment and holding tanks are to replace an existing wastewater system, which extends up to 7m seaward of the foreshore building line. The proposed wastewater treatment and holding tanks are located within 4m of the foreshore building line, and as such, the system is consistent with the provisions of the current and exhibited Draft PLEP 2014.

At the time that the application was originally lodged, the landscape plans appeared to propose boundary fencing within the foreshore area, and a number of submissions were received in objection to the apparent loss of foreshore access. Whilst access along the foreshore is somewhat restricted by the topography of the land, the applicant has since confirmed that no new fencing is proposed, and the current provision of access along the foreshore and to the waterway will remain. The proposed works do not impact upon natural foreshore processes or affect the significance or amenity of the foreshore area, and overall, Council can be satisfied that the objectives of the foreshore building line are achieved, and the matters identified by Part 3 of this clause are satisfied.

Impacts upon vegetation

- **Clause 7.6 (Biodiversity) of PLEP 2014**
- **Clause B4.7 (Pittwater Spotted Gum Forest – Endangered Ecological Community)**

Council's Natural Environment Officer provided the following comments in this regard:

An arborist report (Rain Tree Consulting, September 2017) has been submitted with the DA and assesses twenty (20) trees, of which:

- *four (4) are recommended for removal to accommodate the development (Trees 4, 5, 9, 17);*
- *one (1) has been approved for removal under an earlier DA (Tree 2);*
- *four (4) are neighbouring trees which require protection or if to be impacted/removed will require owner's consent (Trees 6, 15, 16, 18);*
- *five (5) will not be significantly affected by works subject to implementation of recommended general and targeted protection measures.*

The subject site is located within the known distribution of the Pittwater Spotted Gum Endangered Ecological Community (EEC) listed under the Biodiversity Conservation Act 2016. Of the trees recommended for removal, three (3) are diagnostic species (Grey Ironbark - Eucalyptus paniculata) of the EEC. These specimens have been assessed by the consulting arborist as having a medium retention value and a short to medium useful

*life expectancy, and with the exception of Tree 2 are proposed for removal to accommodate the new inclinator. It is considered that the proposed inclinator has been sited to avoid impact to Spotted Gums (*Corymbia maculata*) and other trees with higher retention value and useful life expectancy.*

If the inclinator is to be approved as proposed, amendments to the landscape plan are required to offset the loss of three (3) Grey Ironbarks and to satisfy the following controls:

- *Development shall result in no significant onsite loss of canopy cover or a net loss in native canopy trees.*
- *Development shall retain and enhance habitat and wildlife corridors for locally native species, threatened species and endangered populations.*
- *Development shall ensure that at least 80% of any new planting incorporates native vegetation (as per species found on the site or listed in Pittwater Spotted Gum Endangered Ecological Community).*

The development must not impact upon trees not approved for removal and general and targeted protection measures recommended in the submitted arborist report must therefore be implemented. Whilst neighbouring trees assessed in the arborist report are exempt species, owner's consent is required where they may be impacted by the development.

It is considered that, subject to recommended conditions of consent, the development is unlikely to have a significant adverse effect on the Pittwater Spotted Gum EEC.

A number of submissions received in objection to the development raise concerns regarding the impacts to existing canopy trees and the loss of pre-existing trees on the site in recent years.

Whilst the proposed development will result in the loss of existing canopy trees, the proposal has been designed to minimise impacts upon the trees of higher significance, and the impact can be somewhat mitigated with proposed replacement plantings. A number of existing canopy trees are to be safely retained, and despite the proposed loss, the overall quality of landscaping on the site is to be improved and enhanced as a result of the proposal.

The loss of significant canopy trees from the site that occurred in 2015 is a reflection of the 10/50 Code introduced by the NSW RFS in August 2014, which allows for the removal of existing canopy trees located within 10m of existing dwellings without the need for consent from Council. Whilst the 10/50 Code is still applicable to the site, the provisions of the 10/50 Code cannot override a condition of consent, and as such, if approved, all existing canopy trees to be retained and those proposed will be required to be retained for the life of the development, irrespective of their proximity to the existing dwelling.

Submissions were received with specific regard to the potential impact upon existing canopy trees associated with the effluent irrigation area of the proposed waste water management system. Noting that this was not considered in the original arborist report, further information was requested and subsequently provided to ensure that the effluent irrigation area would not result in any impacts upon trees nominated for safe retention.

A submission was also received in regards to the extent of impact proposed to Tree 18. Tree 18 is identified as a Chinese Elm, in fair-good condition. The trunk of T18 is predominately located on the adjoining site at 3 The Chase, however the majority of the canopy extends over the subject site. The arborist report provided to support the application at lodgement identified that the proposed development would require significant pruning of Tree 18 to a point where the retention value of the tree would be compromised. As owners consent to remove the tree was not provided by the adjoining property owners, alterations to the design were seen to be required to enable the tree to be safely retained.

Amended plans were subsequently received which reduce the extent of development below the canopy spread of Tree 18, to a point where the tree can be safely retained. This is confirmed in the addendum arborist report provided to Council on 28 February 2018.

Wastewater Management

- **Clause 7.10 (Essential services) of PLEP 2014**

The site is not connected to the sewer, and as such, a wastewater management system comprised of treatment tanks and dispersions trenches is proposed as part of the application. Submissions have been received which raise particular concerns in regards to the dispersion trenches, and make reference to commentary in the geotechnical report in relation to absorbency and slip potential.

In addition to the geotechnical report, the application was supported a wastewater management report which includes a detailed assessment of the sub-surface conditions of the site, and concludes that the proposed system is suitable in consideration of these conditions. Both the geotechnical report and the wastewater management report have been reviewed by Council's Development Engineer and Health Officer, who support the proposal, subject to conditions of consent requiring further certification prior to the issuance of any Construction Certificate and Occupation Certificate.

Overall, Council can be satisfied that the proposed dwelling will be appropriately serviced by all essential services, consistent with the provisions of clause 7.10 of PLEP 2014.

Pedestrian Access

- **Clause A1.7 (Considerations before consent is granted) of P21 DCP**
- **Clause B3.2 (Bushfire Hazard) of P21 DCP**
- **Clause 7.8 (Limited development on foreshore area) of PLEP 2014**

A number of submissions have been received which raise concern regarding the obstruction of pedestrian access across the site, with respect to both the ability for emergency services to access the site from the rear and for neighbours to cross the site to gain access to the National Park. Whilst new fencing no longer forms part of the subject application, pedestrian access through the site is considered as follows:

Access for Emergency Services

The site is identified as bushfire prone and the application was supported by a bushfire risk assessment report that states that in the event of a fire, operational access and emergency egress will be via the waterway. However, there may be circumstances where access to the site is gained via the fire trail in the National Park at the rear of the site, or when emergency personnel have to go across the site between the waterway and the National Park. There may also be circumstances where emergency services within the National Park require access to the water tanks on the site for firefighting purposes. It is for this reason, that any physical barrier that restricts access through the site is considered unreasonable.

Whilst the new perimeter fencing has been removed from the application, the existing tennis court fencing is proposed to be retained, with landscaping to be enhanced along both sides to a point where access to the rear of the site will be restricted. There are access gates in both corners of the tennis court that would enable access to the rear of the site; however these gates have been locked throughout the course of the assessment process.

Whilst the reasonableness of the retention of the existing tennis court fence is discussed separately further in this report, if the fence was ultimately to be retained, a condition is recommended to ensure that access to the rear of the property remains unimpeded, and that at a minimum, the gates are required to remain unlocked or are removed in their entirety.

Access for Neighbours

Submissions have been received by and on behalf of the property owners of 5, 6 & 7 The Chase in regards to the potential obstruction of pedestrian access across the subject site. Access to the dwellings at 5, 6 & 7 The Chase is limited to the waterway, and the lots do not have a direct connection to the National Park to the west. In order for these property owners to gain access to the National Park, and in turn the fire trail and access to the public wharf, the property owners have historically walked across/along the northern and eastern boundaries of the subject site. This appears to have occurred informally, with no legal right of carriageway on the title of the land.

Whilst the provisions of clause 7.8 of PLEP 2014 encourage access along and to the foreshore, there is no policy position that requires the provision of access through private property to allow adjoining property owners to gain access to the National Park. In this respect, all relevant property owners are encouraged to come together to discuss any ongoing access issues and come to an agreeable solution.

Construction Methodology

- **Clause A1.7 (Considerations before consent is granted) of PLEP 2014**
- **Clause B3.7 (Estuarine Hazard – Low Density Residential) of PLEP 2014**

Submissions have been received which raise concern with regard to construction methodology and the potential impacts upon the fire trail at the rear of the site. The application was supported by a construction methodology plan demonstrating that access for construction materials can be achieved from the waterway without reliance upon the fire trail to the rear. If the application is to be approved, conditions of consent are recommended to ensure that:

- No materials are stored below the EPL (in accordance with conditions recommended by Council's Principal Officer, Coast and Estuary under the provisions of clause B3.7 of P21 DCP)
- The construction methodology plan is to be reviewed and certified by the project arborist prior to the issuance of a Construction Certificate to ensure that the proposed method of construction, in addition to the temporary structures proposed, will not result in any impacts upon trees nominated for safe retention.
- Construction access, including deliveries and access by trades people, is to be via the waterway and jetty associated with the subject site.

In the time since the application was initially lodged, the application has been amended to include the demolition of the existing tennis court. These works are not identified on the construction methodology plan, and as such, further conditions are recommended as follows:

- With the exception any part of the existing slab on top of the existing water tanks, the concrete slab of the tennis court is to be demolished in its entirety.
- With the exception of the footings/retaining walls to the south-east of the existing water tanks, all footings and fencing associated with the existing tennis court is to be removed.
- The demolition of the tennis court is to occur in conjunction with the existing dwelling, prior to any new construction activity on the site.

Character

- **Clause A4.8 (Lower Western Foreshores and Scotland Island Locality) of P21 DCP**
- **Clause D8.1 (Character as viewed from a public place) of P21 DCP**
- **Clause D8.3 (Building Colours and Materials) of P21 DCP**

The majority of submissions received raised concern regarding the visual impact of the proposal as seen from the waterway, and a perceived inconsistency with the existing and desired character of the Lower Western Foreshores and Scotland Island locality. The desired

future character of the Lower Western Foreshores and Scotland Island locality is prescribed by clause A4.8 of P21 DCP, with development controls and outcomes for the character of a development as viewed from a public place prescribed by clause D8.1 of P21 DCP.

In response to the concerns raised regarding the visual impact of the proposal, the application was amended to reduce the overall width of the proposed dwelling from 27m to 23.9m, with additional landscaping introduced seaward of the dwelling to soften the development as seen from the waterway.

Whilst the building may be slightly wider than the majority of dwellings within the visual catchment of the site, the width is a reflection of the subdivision pattern of the site, and the scale of the proposed development is not inconsistent with the built form of other properties throughout the locality. Furthermore, whilst the design presents its longer/wider façade to the waterway, the design and siting of the proposal actively minimises the vertical nature of the development, which is otherwise greater on narrower sites, where the development has to step down the slope to achieve the same internal floor area. This design approach also reduces the extent of excavation associated with the dwelling, as the footprint follows the contour, rather than working against it.

The orientation of the building also maximises amenity for both the future occupants of the dwelling and neighbouring properties. The width of the dwelling across the site, and in turn the narrow depth of the building, maximises views from within the dwelling to the south, whilst also maximising solar access to all rooms to the north. The limited depth of the dwelling also minimises overshadowing and overlooking of adjoining properties, which would otherwise be increased by a development that was designed to step down the slope of the site.

Whilst the external walls of the proposed new dwelling are proposed to be clad in natural timber, which will age and blend into the bushland setting, the proposed roof is to be finished in Colorbond 'Windspray', a mid-grey tone. Although 'Windspray' is ordinarily accepted as the lightest tone that achieves compliance with the requirements of clause D8.3 of P21 DCP, it is considered that the proposal would benefit from a darker tone, to ensure that the visual impact is appropriately minimised.

This importance of the use of a darker tone is highlighted by the existing dwelling at the subject site. Whilst surrounding houses are generally finished in dark colours and materials, that recede into the shadows of surrounding canopy trees, the existing light coloured dwelling is illuminated by direct sunlight for the majority of the day, resulting in an increased visual appearance as seen from the waterway (and even so far as Church Point Ferry Wharf). With this in mind, the use of a darker roof tone, such as Colorbond 'Monument', is recommended for the roof form. Furthermore, conditions are recommended to incorporate additional canopy trees to the north-west of the dwelling, to further minimise the visual impact of the development by creating additional shadows over the roof form in the afternoon.

The primary view of the proposed development will be from the waterway to the south; however, the proposal will also be visible from the waterway to the east, across 6 and 7 The Chase. Some of the submissions received raised concerns regarding the visual impact of the development as seen through this secondary view corridor, referred to as 'Little Lovett Bay' in the submissions. Although the proposal will be taller than the current dwelling on the site, the eastern façade is well articulated, with a built form that steps back from the boundary as the height increases, differing roof forms and materiality. The view of the proposed dwelling from the east will also be filtered by existing canopy trees on the adjoining sites and proposed canopy trees on the subject site, as shown on the amended landscape plan.

Subject to conditions of consent requiring the use of darker tones and additional landscaping, the visual impact and character of the proposed new dwelling is consistent with that anticipated by the provisions and outcomes of P21 DCP, and the desired future character of the Lower Western Foreshores and Scotland Island Locality.

Landscaping

- **Clause C1.1 (Landscaping) of P21 DCP**
- **Clause B3.2 (Bushfire Hazard) of P21 DCP**

The landscape plan provided at the time of lodgement proposed long runs of Lilly Pilly and Viburnum hedging along the majority of the property boundaries, including a continual run of hedging down to the foreshore. Formal hedging that delineates the property boundaries is not considered to be appropriate within the natural bushland setting of the site, nor is it consistent with the provisions of *Planning for Bushfire Protection 2006*, and as such, amended landscape plans were requested to demonstrate the removal of the proposed hedging.

Council's Natural Environment Officer provided with following comments with respect to both the original and amended landscape plans, and the provisions of clause C1.1 of P21 DCP:

The original submitted Landscape Plan (CAB Consulting, September 2017) incorporates approximately 76% native species (by total number species) with several exotic deciduous autumn-colour feature trees proposed. These trees are incongruous with the broader locally native landscape context of the site and were recommended to be deleted from the planting schedule. In addition, the originally-proposed Viburnum hedge is not consistent with the existing landscape character and environmental values of the site, and was consequently recommended to be replaced with a mix of locally native shrub, hedge and/or grass species listed under the Pittwater Spotted Gum Forest Endangered Ecological Community.

The original Landscape Plan does not provide for sufficient landscaping/canopy trees to soften the built form and screen the development from the western and eastern Pittwater foreshores. Provision of additional plantings (comprising species of the Pittwater Spotted Gum EEC) was recommended to achieve the outcomes of the control.

*An amended Landscape Plan (CAB Consulting, January 2018) was submitted based on initial feedback from Council's Principal Planner and Environmental Officer. The amended plan incorporates additional (6) plantings of advanced Spotted Gum (*Corymbia maculata*) specimens which in conjunction with the proposed Grey Ironbark (*Eucalyptus maculata*) plantings will compensate for the removal of three (3) existing Grey Ironbarks. Deletion of some autumn-colour feature trees and the formal Viburnum hedge will also serve to improve the congruity of the proposed landscaping with the broader landscape character. Proposed under-tree garden beds, canopy tree plantings between the dwelling and the existing tennis court, and conversion of the tennis court to turf with edible garden beds will also serve to improve landscape values and screen the development from the water.*

It is considered that, subject to recommended conditions of consent, the amended Landscape Plan (submitted with the amended SEE, Arborist Statement and Bushfire Report) can meet the objectives of the control.

Whilst the majority of the formal hedging has been removed, a section of formal hedging remains along the property boundary between the proposed dwelling and the adjoining dwelling at 7 The Chase. The hedging is generally proposed immediately adjacent to an existing timber and mesh frame with an established vine that acts to minimise overlooking between adjoining properties. In addition to the frame and vine, a timber horizontal slatted privacy screen is located on 7 The Chase, that runs along the majority of the length of the common boundary.

A submission has been received from the owners of 7 The Chase in objection to this specific area of hedging. Subject to a condition that requires the hedge to be maintained at a height of no more than 2.0m above existing ground level, and noting further discussions with regard to view sharing, the proposed hedging is not considered to result in any unreasonable impacts upon the adjoining property, as it will act generally in the same manner as the existing vine and privacy screen located between the properties.

Further submissions have been received in objection to the extent of turf proposed, and the lack of replacement understorey plantings. This concern was echoed by the assessing officer, as the turf presented as a visual reminder of site disturbance and clearing across the site. In response to these concerns, the applicant advised that the extent of turf was a reflection of the bushfire hazard that affects the site, and the need to minimise ground fuel within the APZ. However, this response seems at odds with the landscaping response for the rest of the site, noting that mass plantings are proposed along the length of both side boundaries.

Whilst the constraints on landscaping associated with the bushfire hazard are appreciated, the proposed landscaping plan, and in particular the generously spaced planters between turf in the area of the existing tennis court, is not considered to achieve an appropriate balance between bushfire mitigation measures and the bushland character of the site. Noting the expanse of clearing around the footprint of the proposed dwelling, a condition is recommended to require at least half of the area of the existing tennis court to be converted to areas of mass planting with at least 2 canopy trees.

Stormwater Management

- **Clause B5.4 (Stormwater Harvesting) of P21 DCP**

A number of submissions have been received in regards to stormwater management on the site, raising concerns relating to historical erosion that has occurred in the south-western corner of the site, and alleged ongoing issues associated with the tennis court. The application was supported by a stormwater management plan, which has subsequently been reviewed and endorsed by Council's Development Engineers, subject to conditions of consent. Furthermore, the application has been amended to remove the existing concrete and synthetic grass tennis court, which will increase water infiltration at the rear of the site, whilst the retention of strip drain will minimise overland flow from upslope. Overall, the proposed water management solution will result in an improvement of water management on the site, and the outcomes of clause B5.4 of P21 DCP are achieved.

Water Supply

- **Clause 7.10 (Essential services) of PLEP 2014**
- **Clause B5.6 (Rainwater Tanks – Water Supply) of P21 DCP**

The site is not connected to Sydney Water, and is reliant upon tank water for potable and non-potable use, including bushfire protection. In accordance with the provisions of clause B5.6 of P21 DCP, tanks with a minimum capacity of 45,000L are required in association with a new dwelling, with 10,000L to be stored in a separate tank and set aside for fire fighting purposes.

Initial concern was raised in this regard, as the application relied upon tanks that were not located within the subject site and no evidence was provided to confirm that the tanks were owned by the subject property owners, that they were connected to the dwelling or that owners consent had been provided by the relevant land owner for the use of the tanks. The applicant has since confirmed the size and location of all tanks on the site, such that a total capacity of 67,150L is available, inclusive of a separate 15,000L supply for fire fighting purposes.

As noted in the bushfire risk management report, the existing tanks are not fitted with appropriate adopters to allow direct connection for fire fighting purposes. However, conditions of consent are recommended to ensure consistency with the recommendations of the bushfire risk management report, including those that require new fittings to be provided.

View Sharing

- **Clause C1.3 (View Sharing) of P21 DCP**

A submission has been received from the property owners of 7 The Chase, being the property immediately to the east of the existing dwelling at the subject site, raising concerns with regard to the loss of views to the west. After further conversations with the relevant property owners, the concerns specifically relate to water views currently obtained from windows on the southern elevation of the dwelling, across the subject site to the south-west, as shown in **Figure 2**.

7 The Chase is a waterfront property, with expansive views of Little Lovett Bay to the north, the wider Pittwater Waterway to the east, and Scotland Island to the south-east. These views are obtained across the foreshore area of 7 The Chase, with no vulnerability or risk of being affected by future development. The view corridor in question is a secondary aspect that is obtained across the common side boundary and also the rear boundary of the adjoining site at 6 The Chase.



Figure 2 – south-westerly view from 7 The Chase across the subject site

The eastern corner of the proposed development, being the portion of the building that is closest to the existing dwelling at 7 The Chase, is sited within the footprint of the existing building to minimise impacts upon adjoining properties, and maximise retention of views. If anything, the proposed deck is situated slightly further back than the existing elevated deck, such that the view corridor across the subject site is likely to increase as a result of the siting of the proposed new dwelling.

However, it is noted that a Lilly Pilly hedge is proposed to extend part way down the common boundary, approximately 4m past the existing timber frame and vine, which will grow to obstruct a portion of this view corridor. It appears that the hedge is proposed to provide greater visual privacy between the dwellings, noting that the inclinometer landing and the main entrance of the proposed dwelling are to be located in this corner of the proposed dwelling.

The view corridor in question is obtained across the side boundary, with the impact of the hedge limited to a portion of the water views from only one of three windows on the southern elevation of the dwelling that is associated with a bedroom. In consideration of the views retained, not only from that one window in the bedroom but from the dwelling as a whole, and noting that the primary outlook is towards the east, the proposed impact associated with the hedge is negligible and not unreasonable, and view sharing is achieved.

Solar Access

- **Clause C1.4 (Solar Access) of P21 DCP**

Clause C1.4 of P21 DCP prescribes that the primary area of private open space and windows associated with the primary living area of the proposed dwelling are to receive a minimum of 3 hours of direct sunlight in midwinter. The gravel area to the north of the kitchen/dining area and the windows on the northern elevation associated with the living room will receive in excess of 3 hours of direct sunlight, consistent with the development control.

Clause C1.4 of P21 DCP also prescribes that the primary area of private open space and windows associated with the primary living area of adjoining dwellings are to maintain a minimum of 3 hours of direct sunlight in midwinter. Submissions have been received from adjoining property owners in this regard, and they are considered individually, as follows:

3 The Chase:

The dwelling at 3 The Chase is situated to the west of the proposed new dwelling. The shadow diagrams provided to support the application demonstrate that the proposed new dwelling will result in additional overshadowing of the eastern elevation of the existing dwelling and the outer edge of the primary area of open space between 9am and midday in midwinter. However, despite this additional overshadowing, more than 50% of the glazed area of the windows on the eastern elevation will retain direct sunlight during this time, and the primary area of private open space will retain direct sunlight for the majority of the day. It is also noted that the additional overshadowing occurs within an area that is already overshadowed by existing vegetation. Overall, the proposal is not considered to result in any unreasonable overshadowing upon the existing dwelling at 3 The Chase.

5 The Chase:

The dwelling at 5 The Chase is located to the south-east of the proposed new dwelling. The shadow diagrams provided to support the application demonstrate that the proposed new dwelling will result in additional overshadowing of the northern most room in the existing dwelling at 5 The Chase at 3pm in midwinter. The room in question is currently used as a bedroom, but is also said to be used as a sunroom. The room features clear glazing along the northern and southern façade, and opaque glazing along the western façade. Despite the overshadowing that will occur at 3pm in midwinter, the room will still maintain 3 hours of direct sunlight to glazing in midwinter and overall, the proposal is not considered to result in any unreasonable overshadowing upon the existing dwelling at 5 The Chase.

6 The Chase:

The dwelling at 6 The Chase is located downslope to the east/south-east of the proposed new dwelling, within the foreshore area. As demonstrated by the shadow diagrams provided to support the application, the proposed new dwelling will not result in any additional overshadowing of the existing dwelling or primary area of private open space at 6 The Chase between 9am and 3pm in midwinter.

7 The Chase:

The dwelling at 7 The Chase is located to the east of the proposed new dwelling. As demonstrated by the shadow diagrams provided to support the application, the proposed new dwelling will not result in any additional overshadowing of the existing dwelling or primary area of private open space at 7 The Chase between 9am and 3pm in midwinter. However, the existing shed, which is proposed to be retained, overshadows an area of

private open space at the rear of the dwelling at 3pm. This existing impact is not made any worse by the proposal, and the area affected (which is covered with opaque sheeting) retains in excess of 3 hours of sunlight throughout the remainder of the day. Overall, the proposal is not considered to result in any unreasonable overshadowing upon the existing dwelling at 7 The Chase.

Visual Privacy

- **Clause C1.5 (Visual Privacy) of P21 DCP**

A submission has been received from the property owners of 5 The Chase raising objection with regard to overlooking associated with the proposed new dwelling. Clause C1.5 of P21 DCP requires living rooms and private open space areas to be protected from direct overlooking within 9m. The proposed front balcony is located approximately 20m upslope from the closest room at 5 The Chase (a bedroom/sunroom) and approximately 24m from the closest area of private open space. The spatial separation between the two dwellings, in addition to the new landscaping proposed, ensures compliance with the requirements and outcomes of clause C1.5 of P21 DCP.

Note: The same submission raised concerns regarding visual privacy impacts associated with proposed inclinator. These concerns are considered separately with regard to the inclinator, below.

Inclinator

- **Clause C1.6 (Acoustic Privacy) of P21 DCP**
- **Clause C1.13 (Pollution Control) of P21 DCP**
- **Clause C1.19 (Incline Passenger Lifts and Stairways) of P21 DCP**

The application proposes an inclinator along the eastern side boundary, to connect the boatshed level and the dwelling. The inclinator is a dual railed system, situated at a distance of 2m from the property boundary shared with 5 The Chase. The location of the proposed inclinator generally aligns with the location of the existing access stairs and pathway.

Clause C1.19 of P21 DCP prescribes certain design criteria for inclinator, which is considered as follows:

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

Comment: The proposed inclinator does not involve excessive excavation or the removal of natural rock; however the siting of the proposed inclinator rails necessitates the removal of one tree (Tree T9 – a Grey Ironbark). The proposed the removal is not excessive, and has been supported by Council's Natural Environment Officer.

- be erected as near as possible to the ground level (existing) of the site, and shall not involve the erection of high piers or visible retaining structures, and*

Comment: The application was supported by sections of the path of the proposed inclinator to demonstrate that the rails are located as close to existing ground level as possible.

- be located and designed to minimise the effects of noise from the motor and overlooking of adjoining dwellings, and*

Comment: The motor of the proposed inclinator is to be located at the top of the inclinator rails, within an insulated case. The application was supported by

a letter from the manufacturer to ensure that the noise levels associated with an uninsulated/uncovered motor were less than 50dBA, and as such the noise levels of the motor would be further reduced within the proposed casing.

Clause C1.19 of P21 DCP prescribes that the noise level of an inclinator shall not exceed 60dBA when measured 1m from any adjoining premises. Clause C1.6 of P21 DCP also prescribes that the noise level of any noise generating plants must not exceed 5dBA above background noise when measured from the property boundary, and both clause C1.6 and C1.13 require PEO Act and in turn, the Industrial Noise Policy.

The type of inclinator proposed, whereby the motor is in a fixed location at the top of the system rather than underneath the moving carriage, is a quieter option than others on the market, and in light of the information provided to support the application, it is considered that the system can comply with the noise restrictions of P21 DCP. Should the application be approved, conditions of consent are recommended to ensure compliance in this regard, with certification from an acoustic engineer prior to the issuance of any OC.

The proposed inclinator rails, whilst setback 2.1m from the common side boundary, are located at a distance 2m of the primary private open space of the adjoining dwelling at 5 The Chase. The existing deck is located with a nil setback to the common side boundary, and lacks any form of privacy attenuation measures.

Whilst the impact associated with an inclinator is considered to be greater than the existing stairway, as people are generally looking at their feet as they walk upstairs, the additional impact is considered to be reasonably mitigated by the proposed privacy screen that is fixed to the inclinator carriage, and the additional landscaping proposed along the boundary.

- iv. *be painted to blend in with surrounding vegetation and screened by landscaping, and*

Comment: The applicant has advised that the rails will be painted green to blend with surrounding vegetation, and the proposed screen on the carriage will be constructed of natural timber and allowed to grey.

- v. *be set back two (2) metres from the side boundary to the outer face of the carriage*

Comment: The rails of the proposed inclinator are setback 2.1m from the side property boundary, resulting in a 2m setback between the outer face of the carriage and the boundary.

- vi. *be located wholly on private land, and*

Comment: The proposed inclinator pathway and landing areas are wholly maintained on private property.

- vii. *have a privacy screen where there is a direct view within 4.5m to a window of a habitable room of another dwelling.*

Comment: A privacy screen is proposed on the carriage of the inclinator, with additional landscaping proposed within the 2m setback area.

A submission has been received from the property owners of 5 The Chase in objection to the proposed inclinator, and the impacts associated with its use with respect to noise and privacy.

As discussed with respect to the design criteria, the proposal is considered to reasonably minimise impacts upon the amenity of the adjoining property, such that the impact is no worse than that of the existing pedestrian access at the site.

A number of submissions also raised concern regarding the visual impact of the proposed inclinator, describing it as a scar across the site. Subject to consistency with the Applicant's statement regarding colours and finishes, which are to be enforced with conditions of consent, the proposed rail system will blend into the surrounding natural environment, and will not be readily visible from the waterway.

Clause C1.19 of P21 DCP aims to ensure that incline passenger lifts (inclinator) cause minimal visual and acoustic disturbance to the environment and neighbours, and the choice of inclinator system and the proposed inclinator design is considered to achieve consistency with the outcomes of clause C1.19 of P21 DCP in this regard.

Separately Accessible Structures

- **Clause C1.14 (Separately Accessible Structures) of P21 DCP**

The application seeks to retain an existing outbuilding, which includes bathroom facilities, to be used as a gym. As the existing outbuilding is to be used for a recreational purpose, the proposal is consistent with the aims of clause C1.14 of P21 DCP, and the retention of the bathroom facilities is considered to be reasonable. Conditions are recommended to ensure that the structure is not separately inhabited.

Landscaped Area

- **Clause D8.9 (Landscaped Area) of P21 DCP**

The majority of submissions received raise concern with regard to the amount of hard surfaces proposed on the site, and the resultant non-compliance with the landscaped area calculation prescribed by clause D8.9 of P21 DCP.

At the time of lodgement, the applicant sought consent for a development footprint of approximately 1071m² or 41 % of the total site, inclusive of the new dwelling and the existing tennis court. In response to concerns raised by both Council and the community, the proposal was amended to reduce the footprint of the development to 646m² or 24.6% of the total site, as follows:

- Proposed new dwelling footprint: 230m²
- Existing shed: 33m²
- Outdoor recreation areas: 126m²
- Pathways: 170.5m² (134.5m² less than 1m in width)
- Boatshed: 10m²
- Water tanks: 77m² (52m² for fire fighting purposes and 5m² for waste water)

*It is noted that these calculations differ from that presented by the applicant in the site coverage diagrams in drawing LB 107, dated 22 January 2018. The key point of difference is that the applicant has calculated roof areas, where by the calculations above are measured from the external face of the wall.

Clause D8.9 of P21 DCP prescribes that the maximum area not provided as landscaped area shall be 230m². Subject to consistency with the outcomes of the control, a series of variations are provided, which would allow for the following to be included within the landscaped area calculation:

- pathways less than 1m in width
- impervious recreations area (up to 6% of the site area)

- water tanks to be used for fire fighting purposes or those associated with waste water systems.

The outcomes of D8.9 of P21 DCP are considered, as follows:

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

Comment: The proposed non landscaped area calculation does not detract from consistency with the desired future character of the locality, noting that the proposed built form will be maintained below the tree canopy and screened by landscaping as seen from both the waterway and the National Park.

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

Comment: A considerable proportion of the proposed non landscaped area calculation comprises at-grade pathways and recreation areas that do not attribute to bulk and scale. The proposed enclosed building works, which are limited to a total area of 230m², are well articulated and feature projecting terraces and shade elements such as awnings and varied roof forms, consistent with the desired character of the locality. Overall, the bulk and scale of the proposed works is considered to be reasonably minimised.

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

Comment: As discussed in greater detail further in this report, the proposed development does not result in any unreasonable impacts upon adjoining properties with regard to privacy, solar access of amenity.

- *Vegetation is retained and enhanced within the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation including tree canopy.*

Comment: The proposal was supported by a landscape plan which demonstrates an enhancement of locally native vegetation across the site, and subject to minor amendments recommended in conditions, the proposed development will appear secondary to landscaping as seen from the public domain.

- *Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.*

Comment: The proposed development has been reviewed by Council's Development Engineer, who has recommended a series of conditions to ensure that stormwater is appropriately managed on the site. A number of submissions have been received in regards to stormwater runoff associated with the existing tennis court. Noting that the tennis court is now proposed to be removed, the stormwater runoff associated with the rear of the site will be significantly reduced.

- *To ensure the distribution of height and mass preserves, and enhances neighbourhood amenity and has regard to site characteristics and environmental constraints.*

Comment: The size and scale of the proposed new dwelling is compatible with surrounding and nearby dwellings. Whilst concern has been raised by the community regarding the width of the proposed dwelling, the siting of

the built form is considered to respond to the natural features of the site, and avoids the appearance of development cascading down the slope. The siting of the proposed built form also allows for vegetation forward of the dwelling and within the foreshore area to be maximised, and minimises impacts upon surrounding dwellings.

- *To conserve significant natural features of the site and contribute to effective management of biodiversity.*

Comment: The proposed dwelling has been sited to minimise impacts upon the significant features of the site. Whilst 4 existing canopy trees are proposed for removal to accommodate the proposal, the landscape plan provides adequate replacement plantings to ensure that biodiversity on the site is preserved and enhanced.

- *The area of site disturbance is minimised.*

Comment: The proposed works are generally located within the footprint of the existing dwelling and cleared areas to the west of the existing dwelling. The dwelling is also sited on the portion of the site that is comparably flat with a footprint that goes along the contour, to minimise excavation into the slope.

- *Soft surface is maximised.*

Comment: The majority of areas used for outdoor recreation are to be constructed of timber decking or finished in gravel, maximising water infiltration and soft surfaces on the site.

The outcomes of clause D8.9 of P21 DCP are considered to be achieved, and as such, the variations allowing for certain elements to be included within the landscaped area calculation are considered to be warranted. With these variations applied, the total non-landscaped area calculation is reduced to 297m² or 11% of the total site, slightly greater than the 230m² area prescribed by this control.

However, clause D8.9 of P21 DCP also provides a variation for larger sites greater than 1000m², to allow for the minimum area not provided for landscaping to be increased up to 23% of the site, when it can be demonstrated that the development is kept in scale with the locality, that the natural features of the site are preserved, and that the supply of water and the treatment of wastewater is sufficient for the size of the proposed development, without adverse environmental impact.

Despite covering an area of more than 230m², the proposed new dwelling is considered to be in scale with other built form within the Lower Western Foreshores and Scotland Island locality, and the natural features of the site are reasonably preserved and enhanced. The supply of water and the treatment of wastewater are appropriately designed in consideration of the new dwelling, and do not result in any unreasonable impacts upon the natural environment. As such, the proposal is considered to meet the variation to allow for an increased non landscaped area calculation, and with this variation applied, the proposal achieves compliance with the numerical requirements of development control.

Fencing

- **Clause D8.10 (Fences) of P21 DCP**

At the time the application was originally lodged (and notified), the architectural drawings and landscape plans proposed fencing around the entire perimeter of the subject site. The proposed fencing was inconsistent with the provisions of D8.10 of P21 DCP and resulted in

inconsistency with the character of the locality. A number of submissions were received raising objection in this regard.

The application has since been amended such that it no longer proposes any new fencing. However, the applicant seeks to retain the existing tennis court fencing, even though the tennis court is proposed for removal. The existing tennis court fencing is constructed of black wire mesh, at a height of approximately 3m above the surface of the court. The tennis court fencing wraps around the north-eastern, north-western and south-western sides of the tennis court, with large access gates located in the two rear corners. The south-eastern side of the court has a movable screen that encloses the space.

Noting that the existing fence is not consistent with the technical requirements of clause D8.10 of P21 DCP, which discourages fencing and limits any essential fencing to 1.8m in height, the applicant was asked why the retention of the fence was required. The applicant advised that the area within the fencing is to be used as an orchard, and the fence is intended to be used to restrict wildlife and also act as a frame to place a net over the top.

Whilst not readily visible from the waterway, the proposed fencing is highly visible from within the National Park to the rear, and appears at odds with the landscaped/bushland character of the locality. Whilst a fence is a reasonable necessity in association with a tennis court, the as-built fencing is considered excessive for the 7 *Punica granatum* (Pomegranate) trees proposed within the space, and is inconsistent with the outcomes of the development control. Overall, as the tennis court is proposed for removal, the retention of the existing tennis court fence is not supported. Conditions of consent are recommended to require the removal of the fencing.

Extent of excavation

- **Clause D8.11 (Construction, Retaining Walls, Terracing and Undercroft Areas) of P21 DCP**

The application proposes a cellar and plantroom at RL 10.9m AHD, approximately 2m below existing ground level. Submissions have been received in objection to this proposed area, stating that it attributes to excessive excavation on the environmentally sensitive site. The proposed cellar, with an area of approximately 22.75m², has been sited to avoid impact on existing canopy trees and does not attribute to excessive bulk and scale, or the appearance of a three storey dwelling. The proposed excavation has been addressed in the geotechnical risk management report provided to support the dwelling, and overall, the extent of excavation across the site is considered to be reasonably minimised, consistent with the outcomes of this development control.

Site disturbance

- **Clause D8.15 (Site disturbance) of P21 DCP**

Clause D8.15 of P21 DCP prescribes that site disturbance shall not exceed 25% of the site area. However, 'site disturbance' is not defined by P21 DCP and the numerical requirement is somewhat at odds with the non-landscaped area calculations permitted by D8.9 of P21 DCP, which provides that some sites within the locality may be developed with a non-landscaped area of up to 33% of the total site, in addition to permitted variations.

In consideration of the outcomes of the control, which aim to maintain the natural topography of the land, site disturbance is considered to be development that changes the levels of the existing ground surface, such as excavation and fill. In consideration of the areas of cut and fill proposed, the application proposes to disturb approximately 660m² or 25% of the total site.

Whilst the area of site disturbance is at the maximum level prescribed, the height/depth of the proposed cut/fill is generally limited to less than 600mm and could otherwise be undertaken as exempt development under the provisions of SEPP Exempt and Complying. Overall, the

proposal is considered to appropriately respond to the outcomes of the development control and site disturbance is reasonably minimised.

Boatshed

- **Clause D15.15 (Waterfront Development) of P21 DCP**

The plans presented to accompany the application demonstrate a boatshed that straddles the MWHM. The boatshed was approved pursuant to Development Consent N0245/07 and is not proposed as part of the subject application. However, the subject application seeks consent to change the location of approved retaining walls behind the approved boatshed to provide for a level access way along the back of the approved boatshed. A number of submissions were received in objection to the boatshed and the perceived loss of access along the foreshore. Whilst pedestrian access along the water edge is only available at low tide, the proposed changes to retaining walls behind the boatshed facilitate additional pedestrian access, compared to that previously approved.

Consistency with the objectives of the zone

- **Zone E3 Environmental Management of PLEP 2014**

A number of submissions have been received which suggest that the proposal is inconsistent with the objectives of the E3 Environmental Management zone. Following a detailed of the assessment in accordance with the provisions of PLEP 2014, P21 DCP and other relevant policies, the proposal is considered to achieve consistency with the objectives of the E3 Environmental Management zone, as follows:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

Comment: The Western Foreshores has special ecological and aesthetic values that largely result from the remoteness of the area and the proximity to the National Park. The site, in particular, contains remnant species of the Pittwater Spotted Gum Ecologically Endangered Community, which attributes to the distinctly bushland character of the area. The application was supported by a landscape plan which demonstrates that the bushland character of the site is to be preserved and enhanced as a result of the proposal, and Council's Natural Environment Officer is satisfied that the proposal will not unreasonably impact upon the Pittwater Spotted Gum Ecologically Endangered Community.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Comment: Compared to other residential zones, the type of development that is permissible within the E3 zone is comparably limited. However, the proposed dwelling is a permissible form of development and the proposed new dwelling will not have an adverse impact upon the special and unique values of the site.

- *To provide for residential development of a low density and scale integrated with the landform and landscape, and not visually prominent.*

Comment: The proposed new dwelling is of a scale that is compatible with surrounding built form and is consistent with the desired future character of the locality. The development is sited in alignment with adjacent dwellings, setback from the foreshore area, and sufficiently screened by existing and proposed landscaping. Subject to conditions of consent

requiring a minor change to the finish of the roof forms, the proposal will be integrated with the surrounding landscape and not visually prominent.

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

Comment: The proposed development will result in an enhancement of landscaping across the site, including within the foreshore area, which actively retains and enhances the movement of wildlife through and across the site.

- *To ensure the continued viability of ecological communities and threatened species.*

Comment: The proposal provides an enhancement of native vegetation, predominantly comprising vegetation that naturally occurs within the Pittwater Spotted Gum Endangered Ecological Community.

11.0 CONCLUSION

The proposed new dwelling has been designed and sited to minimise impacts upon the existing natural environment and adjoining properties. Whilst the removal of some existing canopy trees is necessitated by the proposal, the impact is not unreasonable and can be offset by suitable replacement plantings.

Whilst a number of submissions have been received in regards to the scale of the development, the size of the proposed dwelling is generally consistent with that anticipated by the provisions of PLEP 2014 and P21 DCP, and is not incompatible with the scale of adjacent and nearby dwellings within the Lower Western Foreshores and Scotland Island locality.

The primary issue raised in submissions appears to be that of pedestrian access across the site for both emergency services and adjacent property owners. With the removal of the originally proposed new fencing and the amendments to the landscape plan, pedestrian access for emergency services is now unimpeded and as such, the concerns regarding emergency access are considered to be satisfied. However, the concerns regarding pedestrian access for adjoining properties that do not have access to the National Park are not so easily addressed. Whilst it is hoped that access would be provided across the site in emergency circumstances, without a legal right of carriageway, there is no obligation for the owners of the subject site to provide pedestrian access across their land. This situation remains unchanged since the original subdivision, and is not altered or worsened as a result of the proposal.

Overall, the proposal is considered to be consistent with the aims and objectives of PLEP 2014, P21 DCP and other relevant policies, and is recommended for approval.

12.0 RECOMMENDATION

That the Northern Beaches Local Planning Panel endorse the findings of this assessment report and approve Development Application N0421/17 for the demolition of an existing dwelling and construction of a new dwelling at 4 The Chase, Lovett Bay, in accordance with the draft determination attached.

DRAFT DETERMINATION

CONSENT NO: N0421/17
ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 (AS AMENDED)
NOTICE TO APPLICANT OF DETERMINATION OF A DEVELOPMENT APPLICATION

Applicants Name and Address:

Lesley Scott
PO Box 923
Newport Beach NSW 2106

Being the Applicant in respect of Development Application **N0421/17**

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 **N0421/17** for:

Demolition of an existing dwelling and construction of a new dwelling

At: 4 The Chase, Lovett Bay

Decision:

The Development Application has been determined by the granting of consent in accordance with:

- **Architectural Plans, prepared by Walknorth Architects, dated 22 January 2018:**
 - LB101, revision C,
 - LB102, revision C,
 - LB109, revision A,
 - LB202, revision B,
 - LB203, revision B,
 - LB204, revision B,
 - LB205, revision B,
 - LB301, revision B,
 - LB302, revision B,
 - LB401, revision B,
 - LB402, revision B,
- **Landscape Plan, prepared by CAB Consulting Pty Ltd, dated 18 January 2018**
- **Demolition Plan LB103, revision A, prepared by Walknorth Architects, dated 12 September 2017**
- **Construction Methodology Plan LB104, revision A, prepared by Walknorth Architects, dated 12 September 2017**
- **Stormwater Management Plan LB105, revision B, prepared by Walknorth Architects, dated 22 January 2018**
- **Schedule of Materials and Finishes LB704, revision A, dated 12 September 2017**
- **Wastewater Assessment Report, prepared by Martens Consulting Engineers, dated September 2017**
- **Arboricultural Impact Assessment Report, prepared by Rain Tree Consulting, dated 9 September 2017**
- **Arboricultural Impact Assessment Report Addendum, prepared by Rain Tree Consulting, dated 22 January 2018**
- **Arboricultural Impact Assessment Report Further Addendum, prepared by Rain Tree Consulting, dated 28 February 2018**
- **Bushfire Risk Management Report, prepared by Blackash Bushfire Consulting, dated 3 September 2017**
- **Bushfire Risk Management Report Addendum, prepared by Blackash Bushfire Consulting, dated 18 January 2018**

- **Geotechnical Risk Management Report, prepared by Martens Consulting Engineers, dated September 2017**
- **BASIX Certificate 844617S_02, dated 23 January 2018**

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: **TBA**

Mark Ferguson
CHIEF EXECUTIVE OFFICER

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:

- A1. All works are to be carried out in accordance with the requirements of the Building Code of Australia and the National Construction Code.
- A2. In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, there is to be such a contract in force.
- A3. 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:
 - a. showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - b. 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
 - c. 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.

- A4. 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.
- A5. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) 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:

- B1. This approval/consent relates only to the new work nominated on the approved consent plans and does not approve or regularise any existing buildings or structures within the property boundaries or within Council's road reserve.
- B2. The recommendations of the approved Geotechnical Risk Management Report referenced in this consent are to be incorporated into the construction plans and implemented during construction and for the life of the development.
- B3. If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Metropolitan Local Aboriginal Land Council (MLALC) and the Office of Environment and Heritage are to be notified.
- B4. No environmental weeds are to be planted on the site.
- B5. All priority weeds (as listed under the *Biosecurity Act 2015*) and environmental weeds are to be removed and managed continuously.
- B6. Landscaping is to be implemented in accordance with the approved Landscape Plan referenced in this consent, as modified by any conditions of consent. This landscaping is to then be maintained for the life of the development. All native trees are to be retained for the life of the development, or for their safe natural life. Trees that die or are removed must be replaced with another canopy tree from the Pittwater Spotted Gum Endangered Ecological Community.
- B7. Air-conditioning units, hot water systems, and other mechanical equipment shall not be located on any roof or in locations that are visible from a public place.
- B8. Building materials are not to be stored or placed on bushland vegetation or foreshore vegetation. Sediment is not to leave the site or enter areas of Bushland vegetation, and the appropriate sediment fencing is to be installed.
- B9. There shall be no damage to intertidal habitats including rocky shores, seagrass beds, salt marshes or mangroves.
- B10. As part of an integrated on-site stormwater management system, stormwater overflow from the rainwater tanks is to be discharged into the adjacent waterway with erosion minimisation facilities installed.
- B11. As part of the integrated stormwater management plan, suitably positioned stormwater quality improvement devices shall be installed and operated in accordance with Manufacturer's Specifications and associated operational guidelines. The stormwater quality improvement devices shall be maintained and emptied of spoil materials at regular intervals. Spoil materials removed from the stormwater quality improvement devices shall be disposed of as dry mixed waste.
- B12. In accordance with Northern Beaches Council's Pittwater Tree Preservation and Management Order, all existing and proposed trees as indicated the approved Landscape Plan referenced in this consent shall be retained except where separate consent from Council has been obtained.
- B13. A minimum of 200mm clearance is to be maintained between any tree trunk and any bearers, joists and decking.

- B14. Gravel used onsite must be inert material such as quartz or sandstone. No blue metal or granite or other igneous material should be used as these release nutrients that can pollute waterways and contribute to weed plumes.
- B15. Electrical and other service connections are to be provided underground.
- B16. The development is to remain consistent with the approved Schedule of Materials and Finishes referenced in this consent, as modified by conditions of consent.
- B17. Use of the new Aerated Wastewater Treatment System (AWTS) on-site sewage management facility is not permitted until an Occupation Certificate has been issued in accordance with the approved Development Consent and Construction Certificate.
- B18. Owners who wish to keep domestic animals shall prevent them from entering any public place adjoining properties or the National Park, by means other than the erection of fences.
- B19. Construction access, including deliveries and access by tradespeople and machinery, is to be via the waterway and jetty associated with the subject site. No access is authorised through the adjoining National Park.
- B20. The site is to be managed in accordance with the recommendations of the approved Bushfire Risk Management Report and Addendum referenced in this consent.
- B21. The works are to be undertaken in accordance with the recommendations of the approved Arboricultural Impact Assessment Report and Addendums referenced in this consent.
- B22. The Estuarine Planning Level (EPL) is 2.77m AHD.
- a. All structural elements below the EPL shall be of flood compatible materials.
 - b. All structures must be designed and constructed to achieve a low risk of damage and instability due to estuarine hazard.
 - c. All electrical equipment, wiring, fuel lines or any service pipes and connections must be waterproofed to the EPL.
 - d. The storage of toxic or potentially polluting goods, materials or other products which may be hazardous or pollute floodwater is not permitted below the EPL.
- B23. The proposed gym is not to be separately inhabited and shall not contain any cooking facilities.
- B24. The noise associated with the use of any machinery or plant equipment on the site, including pumps associated with the water tanks and the wastewater system and the motor of the inclinator, shall not cause a nuisance to adjoining property owners, and at no time shall the noise levels exceed 5dBA above background noise levels as measured from the nearest residential receiver.
- B25. With the exception of the privacy screen, which is to be finished in timber, the inclinator rails and carriage are to be finished in non-reflective dark natural tone, designed to blend with the surrounding natural environment.
- B26. All retaining walls between the waterway and the proposed dwelling are to be constructed of sandstone.
- B27. The tanks associated with the wastewater treatment system are to not protrude above existing ground level.

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.

- C1. 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.
- C2. 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.
- C3. 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.
- C4. An Erosion and Sediment Management Plan is to be submitted prior to the issue of a Construction Certificate. Control over discharge of stormwater and containment of run-off and pollutants leaving the site/premises shall be undertaken through the installation of erosion control devices such as catch drains, diversion drains, energy dissipaters, level spreaders and sediment control devices such as hay bale barriers, filter fences, filter dams and sedimentation basins. Such plan is to be accompanied by a certification from an appropriately qualified person, that the plans/ details have been designed in accordance with the requirements of *Managing Urban Stormwater: Soils and Construction* (Landcom 2004).
- C5. Structural Engineering details relating to the approved 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 practicing Structural Engineer who is registered on the National Engineers Register (NER) maintained by Engineers Australia and has appropriate experience and competence in the related field.
- C6. Drainage plans including specifications and details showing the site stormwater management are to be submitted to the Accredited Certifier with the Construction Certificate application. Such details are to be accompanied by a certificate from (as appropriate) either a Licensed plumber or qualified practicing Civil 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, that the stormwater management system complies 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. The details shall include disposal of site stormwater (if the site is in a known slip area the stormwater disposal system must comply with the recommendations of a Geotechnical Engineers Report).
- C7. 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 Principal Certifying Authority.
- C8. A Landscape Maintenance Plan is to be prepared and submitted to Council that outlines the technique and frequency of maintenance tasks during the establishment of the landscaping on the subject site. The Landscape Maintenance Plan is to be implemented for a period 12

months immediately following the completion of landscape and hardscape works on site. The Landscape Maintenance Plan is to incorporate maintenance and care of hardscape elements (e.g. paving, retaining walls, secured pedestrian access paths), weeding, watering, mowing, consideration of other endemic species where plantings do not respond to the conditions as expected and a procedure for the replacement of failed plantings.

C9. The approved Demolition Plan referenced in this consent is to be updated to include demolition of all elements of the existing tennis court, with the exception of:

- a. The portion of the existing slab directly on top of the existing water tanks, and
- b. The footings/retaining walls to the south-east of the existing water tanks.

C10. The approved Construction Methodology Plan referenced in this consent is to be amended to include:

- a. Confirmation that no building materials are to be stored below the EPL,
- b. The demolition of the existing tennis court and associated fencing, to occur in conjunction with the demolition of the existing dwelling and before construction of the new dwelling commences.

C11. The approved Landscape Plan referenced in this consent is to be amended as follows:

- a. Three (3) additional locally native canopy trees, with a minimum maturity size of 8.5m and a minimum pot size of 100L, and
- b. At least half the area of the existing tennis is to be converted to a mass planting area, with at least two (2) locally native canopy trees with a minimum maturity size of 8.5m and a minimum pot size of 100L.

C12. The project arborist is to:

- a. Review the engineering plans prepared to accompany the Construction Certificate application, and is to certify that the works are consistent with the recommendations of the approved Arboricultural Impact Assessment Report and Addendums referenced in this consent,
- b. Review the amended Construction Methodology Plan, as required by this consent, and provide certification that the temporary construction measures will not impact upon any trees nominated for safe retention, and
- c. Provide a detailed plan of the location of all necessary tree protection measures ('Tree Retention Measures Plan').

C13. The approved Schedule of Materials and Finishes referenced in this consent is to be amended to replace the proposed use of Colorbond 'Windspray' with Colorbond 'Monument' for the roofing, gutters and flashings.

C14. A suitably qualified professional is to provide certification that the architectural plans and landscape plans provided to accompany the Construction Certificate application are consistent with the recommendations of the approved Bushfire Risk Management Report and Addendum referenced in this consent.

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.

D1. A clearly legible *Site Management Sign* is to be erected and maintained throughout the course of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following:

- a. The builder's name, builder's telephone contact number both during work hours and after hours.
 - b. That the contact number for Northern Beaches Council for permits is 9970 1111.
- D2. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- D3. The area of the proposed construction works must be fenced throughout demolition and/or excavation and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.
- D4. 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 preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.
- D5. Where site fill material is necessary, fill materials must:
 - a. be Excavated Natural Material (ENM) only, as approved under the NSW Environment Protection Authority Resource Recovery Exemption (2014);
 - b. be free of slag, hazardous, contaminated, putrescibles, toxic or radioactive excavated material and soil, rock or similar material. Putrescibles and non-putrescibles solid waste (including demolition material) is not permitted.
 - c. Be the subject of testing and monitoring throughout the course of the works, and is to consist of clean fill inert material only, that is, non-contaminated excavated material and soil, and suitable material. Putrescible and non-putrescible solid waste (including demolition material) is not permitted. All imported fill must be sourced locally where practicable to reduce traffic movements.
 - d. Be deposited and works carried out in strict compliance with *Managing Urban Stormwater: Soils and Construction* (Landcom 2004).
- D6. Prior to commencement of any works, temporary sedimentation and erosion controls in accordance with the Erosion and Sediment Management Plan required by this consent are to be installed to eliminate the discharge of sediment from the site and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction including:
 - a. A site fence and silt and sediment control fence is to be erected and maintained during the course of works along any street boundary and park/reserve boundary to the site.
 - b. Sediment is not to leave the site or enter areas of the waterway, and the appropriate sediment fencing is to be installed.
 - c. 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.
 - d. 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.
 - e. Topsoil shall be stripped only from approved areas and stockpiled for re-use during site rehabilitation and landscaping.
 - f. 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.
 - g. Uncontaminated runoff shall be intercepted up-site and diverted around all disturbed areas and other areas likely to be disturbed. Diversion works shall be adequately stabilised.

- h. 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.
- D7. 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.
- D8. 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.
- D9. 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.
- D10. Construction is to be undertaken in accordance with the approved Construction Methodology Plan referenced in this consent, as modified by Part C of this consent.
- D11. A stamped copy of the approved plans is to be kept on the site at all times, during construction.
- D12. Toilet facilities are to be provided in a location which will not detrimentally affect the amenity of any adjoining residents at or in the vicinity of the work site during the duration of the development.
- D13. 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.
- D14. Protection fencing measures (including sedimentation fences) are to be installed in accordance with recommendations in the approved Arboricultural Impact Assessment Report and Addendums referenced in this consent, and the Tree Retention Measures Plan required by Part C of this consent. Protection measures are to be maintained for the duration of works. Protection fencing that is no longer required is to be removed once all works are completed.
- D15. No storage of building materials or building waste, excavated fill or topsoil storage is to occur within the dripline of trees to be retained or within protective fenced areas. Drainage is to be arranged such that fill, building materials or contaminants are not washed into protective fenced areas.
- D16. All recommendations as outlined in the approved Arboricultural Impact Assessment Report and Addendums referenced in this consent are required to be complied with before and throughout the development period, particularly with regard to the following:
 - a. Works, erection/demolition of structures, excavation or changes to soil levels within 5 metres of existing trees are not permitted unless part of the development as approved, and the storage of spoil, building materials, soil or the driving and parking of any vehicle or machinery within 5 metres of the trunk of a tree to be retained is not permitted;
 - b. Where specified, tree guards are to be provided to all trees as indicated in the report, and are to be installed prior to the commencement of any work on the site. Tree guard materials and dimensions are specified in the arborist report;

- c. All works within 5 metres of existing trees including demolition, excavation, civil works, fencing and the like must be carried out by hand and under the supervision of an experienced and suitably qualified arborist. In the event that major structural or feeder roots are encountered, the arborist is to advise the builder to carry out appropriate action to ensure the retention of the tree.
- d. Signage is to be erected advising all contractors and visitors to the site that no works or storage are to take place within the dripline of existing trees.
- e. Any changes or alterations made to the tree management recommendations as outlined by the arborist report due to the discovery of new structural roots or underground services during development works must be reported to the Principal Certifying Authority prior to works recommencing.

D17. The developer or contractor will take all measures to prevent damage to trees and root systems during site works and construction activities including provision of water, sewerage and stormwater drainage services.

NOTE: Trees that are part of an Endangered Ecological Community or are habitat for threatened species and endangered populations must comply with the requirements of the Threatened Species Conservation Act, 1995. Failure to do so may result in a penalty up to a maximum of \$250,000.00 and jail sentences.

Failure to comply with the requirements of the Pittwater 21 DCP Control B4.22 Preservation of Trees of Bushland Vegetation may result in a penalty up to a maximum of \$20,000.00.

D18. All works within 5 metres of the existing trees to be retained including pruning, demolition, excavation, civil works, fencing and the like must be carried out by hand under the supervision of an experienced and qualified Arborist. Should roots larger than 50mm be encountered all excavation works are to cease immediately and a qualified Arborist is to advise on the impacts of the roots removal on the trees survival and report to the Principal Certifying Authority prior to works recommencing. If tree roots are present a pier and beam method of footing construction is to be adopted so as to bridge/span any identified lateral roots.

D19. During site excavation, topsoil which is to be used in later landscape works is to be stockpiled on site and stabilised during construction works. Stockpiles are to be stored outside of hazard areas and not located within the dripline of existing trees which are to be retained.

D20. Critical stage inspections are to be carried out in accordance with clause 162A of the *Environmental Planning & Assessment Regulation 2000*. To allow a Principal Certifying Authority or another certifying authority time to carry out critical stage inspections required by the Principal Certifying Authority, the principal contractor for the building site or the owner-builder must notify the Principal Certifying Authority at least 48 hours before building work is commenced and prior to further work being undertaken.

D21. 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.

D22. All works conducted on site must be undertaken in accordance with the requirements of the NSW Environment Protection Authority to ensure noise and vibration minimises any adverse effects on adjoining land.

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

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.

Note: Prior to the issue of an Occupation Certificate the accredited certifier 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 affect 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 affect such works.

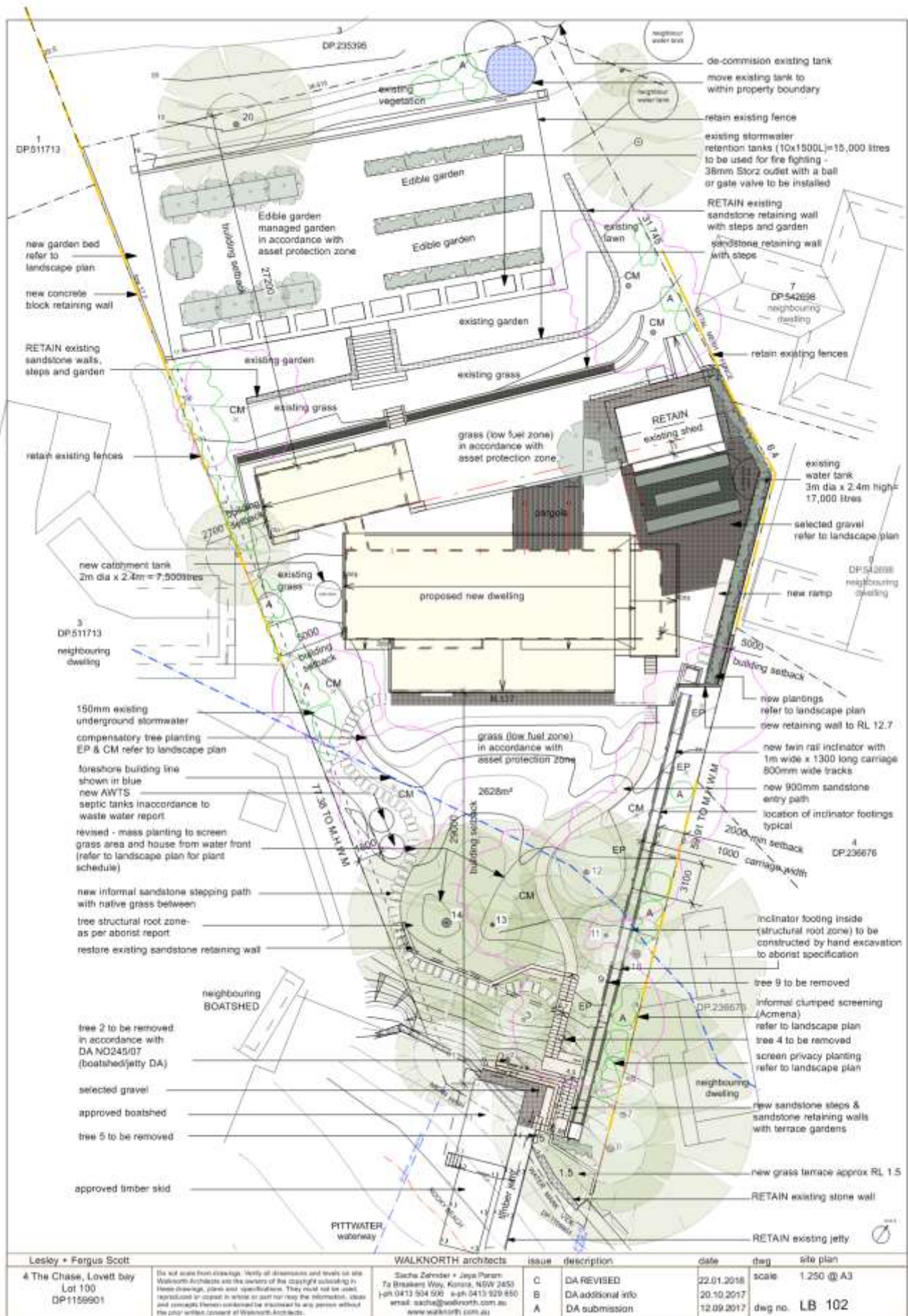
- E1. An Occupation Certificate application stating that the development complies with the Development Consent, the requirements of the Building Code of Australia and that a Construction Certificate has been issued must be obtained before the building is occupied or on completion of the construction work approved by this Development Consent.
- E2. A qualified landscape architect/designer is to certify that all landscaping works have been undertaken prior to the issuing of any Occupation Certificate. The landscape architect/designer is to confirm that all plants are arranged and spaced in a manner that is consistent with the approved Landscape Plan, as amended by any conditions of consent.
- E3. Evidence is to be provided to confirm the engagement of a suitably qualified landscape architect, horticulturalist or landscape contractor who will be responsible for the implementation of the Landscape Maintenance Plan for a minimum period of 12 months.
- E4. 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.
- E5. 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 Principal Certifying Authority.
- E6. The installed domestic subsurface effluent distribution system shall be inspected and certified by an appropriately qualified and experienced wastewater consultant prior to backfilling with topsoil. Written confirmation shall be submitted to the Principal Certifying Authority by an appropriately qualified and practicing Wastewater Consultant following inspection of the installed domestic subsurface effluent distribution system certifying that the works have been completed in accordance with the approved Wastewater Assessment Report referenced in this consent.
- E7. Prior to release of the Occupation Certificate a practicing and licensed Plumber shall submit to the Principal Certifying Authority documentation certifying that the on-site wastewater treatment system complies with the following conditions of consent:
 - a. All plumbing and drainage works have been carried out by a practicing licensed plumber/drainier.
 - b. All effluent is managed wholly within the premises where the system is installed.
 - c. The onsite wastewater system is not installed in such a way that it can contaminate domestic water supply.
 - d. All irrigation pipework and fittings comply with AS 2698 plastic pipes and fittings for irrigation and rural application standard household hose fittings may not be used.
 - e. The irrigation system is not capable of being connected to a mains water supply.

- f. Effluent does not discharge into any natural watercourse or stormwater drain.
 - g. Soaker hoses and standard household sprinklers and attachments are not used for the irrigation effluent.
 - h. The on-site wastewater treatment system is installed in strict accordance with manufacturers specifications.
 - i. Works have been carried out in accordance with the NSW Code of Practice Plumbing and Drainage.
- E8. All effluent land application areas must be completely prepared or landscaped to the satisfaction of Principal Certifying Authority before occupation of the dwelling and in any case, commissioning of the onsite wastewater system treatment.
- E9. Owners of sewage management systems are required to register their system with Council. You are required to submit to Council an application for "approval to operate" an on-site sewage management system. The application form shall be accompanied with the appropriate registration fee, signed and returned to Council prior to release of the Occupation Certificate.
- E10. Within the effluent irrigation area of the aerated wastewater treatment system there must be at least two warning signs that comply with AS 1319 and have a green background, 20mm high capital lettering in black and white and the words Reclaimed Effluent Not For Drinking Avoid Contact.
- E11. The tank associated with the Wastewater System shall have the following information permanently and legibly marked on a non-corrosive metal plaque attached to the lid.
- a. The brand name of the system,
 - b. The manufacturer's name or registered trademark,
 - c. The month and year of manufacture.
- E12. Prior to release of the Occupation Certificate, the applicant is to enter into a service agreement with an aerated waste water treatment system service provider. A copy of the service agreement is to be forwarded to the Principal Certifying Authority. The service agreement is to provide for:
- a. Quarterly testing of the system, as required by the Department of Public Health.
 - b. The keeping of an operator's manual, incorporating a service record.
- A copy of the quarterly service sheet is to be forwarded to Council within 14 days of each service.
- E13. All upsurface stormwater runoff is to be effectively diverted away from the land application area so that it only deals with treated effluent and direct rainfall. A shallow dish-drain or contour bank should be utilised.
- E14. Protection fencing that is no longer required for protection is to be removed, upon completion of construction works.
- E15. At least two nest boxes are to be appropriately installed in trees not affected by development. This must be certified by an Ecological Consultant as being complete and adequate.
- E16. The project arborist is to provide certification that the construction works were undertaken in accordance with the recommendations of the approved Arboricultural Impact Assessment Report and Addendum referenced in this consent, and that trees nominated for safe retention have been safely retained.

- E17. A suitably qualified professional is to provide certification that the as-built works have been completed in accordance with the recommendations of the approved Bushfire Risk Management Report and Addendum referenced in this consent.
- E18. The project architect is to provide certification that the as-built development has been finished strictly in accordance with the approved Schedule of Materials and Finishes referenced in this consent, and as amended by Part C of this consent.
- E19. Prior to the issuance of an Occupation Certificate, a suitably qualified acoustic engineer is to provide certificate that the noise levels associated with the use of all plant equipment on the site does not exceed 5dBA above background noise levels, when measured from the nearest residential receiver.

F. Advice:

- F1. 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.
- F2. The applicant is also advised to contact the various supply and utility authorities, i.e. Sydney Water, Sydney Electricity, Telstra etc. to enquire whether there are any underground utility services within the proposed excavation area.
- F3. 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.
- F4. In accordance with Section 95(1) of the Act, this consent will lapse if the development, the subject of this consent, is not physically commenced within 5 years after the date from which this consent operates.
- F5. To ascertain the date upon which the determination becomes effective and operates, refer to Section 83 of the *Environmental Planning and Assessment Act, 1979* (as amended).







ITEM 3.3	DA242/2017 - 161 CONDAMINE STREET BALGOWLAH - DEMOLITION OF EXISTING DWELLING HOUSE, CONSTRUCTION OF A DUAL OCCUPANCY, SWIMMING POOL AND STRATA SUBDIVISION
REPORTING OFFICER	CLAIRE RYAN
TRIM FILE REF	2018/167789
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA242/2017 for Demolition of existing dwelling house, construction of a dual occupancy, swimming pool and strata subdivision at Lot 9 DP 8303, 161 Condamine Street, Balgowlah for the reasons outlined in the Assessment Report.



Northern Beaches Local Planning Panel Report

2017/020189

DA #	242/2017
Site Address	161 Condamine Street, Balgowlah Lot 9 DP 8303
Proposal	Demolition of existing dwelling house, construction of a dual occupancy, swimming pool and strata subdivision.
Officer	Claire Ryan

SUMMARY:

Application Lodged:

25 October 2017

Applicant:

Cradle Design

Owner:

George Charles Winston Cornwell and Urszula Grazyna Cornwell

Estimated Cost:

\$2,112,900

Zoning:

MLEP 2013 – R1 General Residential

Heritage:

Not applicable

NSW LEC:

Not applicable

Notification:

27 October – 14 November 2017

Submissions received:

Three

Site Inspected:

23 January 2017

LEP (4.6) Variations proposed:

Floor Space Ratio, Minimum Subdivision Lot Size

DCP Variations proposed:

Density, Wall Height, Number of Storeys, Setbacks (Front and Sides), Visitor Parking

Recommendation:

Approval

Subject Property and surrounding area



R1, R2, R3, E3 & E4 Zones

1 of 35

The subject property is commonly known as 161 Condamine Street, Balgowlah and legally known as Lot 9 in DP 8303. The site is located on the western side of Condamine Street. The property is rectangular in shape and has a frontage of 12.497m to Condamine Street, an average depth of 45.72m and an overall site area of 571.3m². The property currently contains a single-storey detached dwelling with no vehicular access. The property slopes approximately 2m from northwest to southeast.

The adjacent property to the north, at 163 Condamine Street, is developed with a single-storey detached dwelling. The adjacent property to the south, at 159 Condamine Street, is developed with a residential flat building.

Property Burdens and Constraints

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

Site History/Background

There are no relevant recent applications to note on site.

Description of proposed development

The proposal seeks consent for:

- Demolition of the existing dwelling;
- Construction of a dual occupancy with four-car basement car park;
- Swimming pool; and
- Strata subdivision.

Internal Referrals

Engineering / Driveway Comments

Council's Engineer / Driveway Officer has commented on the proposal as follows:

"The application has been assessed, please see the comments in below:

- 1) *The applicant proposed to build a new dwelling with basement parking. The total impervious area is approximate 295 square meter which is equal to 52% of the total site area. As such, an Onsite stormwater detention system (OSD) needs to be designed and installed in accordance with Council's "Manly Specification for Onsite Stormwater Management 2003".*

However, the submitted stormwater plan does not comply with the requirement of the above specification.

- 2) *The applicant also proposed to rebuild Council's footpath in order to accommodate the new driveway crossing and basement carpark. However, the proposed suspended footpath on road reserve is not complied with Council footpath standard.*

In discussion with Council's Transport and Civil infrastructure Asset team, they are not supporting the overhang footpath in regarding the future maintenance and access issue.

As the above concerns, Development Engineer cannot support the application."

Assessing Officer's Comment:

Following further discussion, Council's Development Engineer / Driveway Officer was satisfied with the proposal, subject to certain conditions. Council's Development Engineer / Driveway Officer commented on the proposal as follows:

"If the owner does not want to amend the design, we can accept the suspended footpath, subject to:

- 1) a lease agreement with Council: The owner will need to provide a lease agreement between Council and owner. The cost of preparing and endorsement of the lease at owner's cost. Also, there may be an ongoing annual lease fee. The fee shall be calculated based on the current land value at the above areas. The agreement must be determined prior to the issue of any Construction Certification.*
- 2) the suspended footpath: the suspend footpath must be a "stand alone" structure on Road reserve. It shall not be attached to the proposed garage. The minimum life span of the structure shall be 100 years.*
- 3) Section 138 road act approval: An application of the section 138 of road acts needs to be lodged for the assessment and supervision of footpath structure."*

The applicant was notified of the above, and has agreed to the requirements being included by way of conditions of consent. Suitable conditions have been included in the recommendation.

Building Comments

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

Landscaping Comments

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.

Environmental Health

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

Traffic Comments

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

External Referrals

AUSGRID

The proposal was referred to Ausgrid. No comments had been received by Council 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) and Clause 21 (relating to biodiversity, ecology and environmental protection) 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 permissible 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 proposed development provides an additional dwelling to serve the housing needs of the community.

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

The proposed development supports the existing variety of housing types and densities.

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

Not applicable. The proposed development retains the existing residential use of the site.

Part 4 Principal development standards

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

4.	Principal Development Standards	Requirement	Proposed	Complies Yes/No	Comments
4.1	Minimum subdivision lot size	300m ²	See calculations below	No	See comment below.
4.3	Height of buildings	8.5m	7.87m	Yes	-
4.4	Floor Space Ratio	0.5:1 285.65m ²	0.52:1 293.6m ²	No	See comment below.

Note: The applicant has calculated a non-compliant floor space ratio of

4.6 Exceptions to development standards

Minimum Subdivision Lot Size

Recent case law (*DM & Longbow Pty Ltd v Willoughby City Council [2017] NSWLEC 1358*) determined that Clause 4.1 Minimum Subdivision Lot Size applies to any development proposing strata subdivision. As such, Clause 4.1 applies to this proposal.

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

Calculations based on actual strata lot size:

Requirement	300m ²
Proposed	Strata Lot 2: 210.9m ² (Strata Lot 1: 493.2m ² – compliant)
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	29.7%

Calculations based two strata lots on one 571.3m² parcel of land:

Requirement	300m ²
Proposed	285.65m ² per lot
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	4.8%

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 minimum subdivision lot size limitation pursuant to Clause 4.1 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 subdivision lot size of the MLEP 2013 are:

(1) 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 proposed development includes strata subdivision only. As such, the existing pattern of land subdivision is retained. The application demonstrates adequate space for the proposed development and for the provision of landscaping.

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

Comment: As above, the proposed development includes strata subdivision, and therefore does not alter the prevailing land subdivision pattern. As such, the proposed development retains the character of the locality and streetscape.

- (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 development provides adequate open space and landscaping, as detailed in the section of this report relating to Part 4 of the MDCP 2013 – Development Controls.

- (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 development is located so as to sufficiently use existing infrastructure, public transport and pedestrian access to local facilities and services.

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 are addressed as follows:

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

The proposed development provides an additional dwelling to serve the housing needs of the community.

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

The proposed development supports the existing variety of housing types and densities.

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

Not applicable. The proposed development retains the existing residential use of the site.

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: The proposed development provides for an appropriate level of flexibility in applying the minimum subdivision lot size development standard.

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

Comment: The proposed development results in a better outcome, as it provides additional well-serviced housing in the local area.

- (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: The applicant has provided the following written request justifying the contravention of the minimum subdivision lot size development standard:

"Clause 4.6 – to vary the Minimum Subdivision Lot Size development standard.

Under Clause 4.6 of the Manly LEP 2013 we propose to justify the variation to the Minimum Subdivision Lot Size development standard.

- *Name of environmental planning instrument - Manly Council LEP 2013*
- *Zoning of land - R1 General Residential*
- *Objectives of the Zone -*
 - *To provide for the housing needs of the community.*

- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- Objectives of Minimum Subdivision Lot Size development Standard -
 - 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,
 - To maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns,
 - To require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,
 - To ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.

Development standard to be varied -

Part 4.1 Minimum Subdivision Lot Size

- Development standard Clause - Manly Council LEP 2013 - Part 4.1 Minimum Subdivision Lot Size
- Numerical value of the development standard in the environmental planning instrument - 1 dwelling/ 300m²
- Proposed numerical value of the development standard in the Development Application - 1 dwelling/ 285.65m²
- Percentage variation between proposed and the environmental planning instrument - 4.7%

Subclause 3 - Justification of the contravention of the Minimum Subdivision Lot Size development standard is sought by demonstrating:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case -
There is a precedent for undersized Housing Densities within the Manly Council area.
The Minimum Subdivision Lot Size, site control is 1/300m². The proposal has an existing site area of 571.3m² which has dictated a reduced housing density of 1dwelling/285.65m². The proposed FSR of 0.52:1 is a small percentage increase of 4.7% that does not translate into a building that will over densify the proposed lot. Careful consideration has been given to visual aspect and appearance to maintain a harmony within it's context.
- There are sufficient environmental planning grounds to justify contravening the development standard -
The proposal is of a domestic scale and bulk, complimenting the built form and streetscape of Condamine Street. The units have been designed to minimise their visual impact, maintaining compliance with built form controls for open space and landscape areas. Generous side set-backs, exceeding those of the existing dwelling, have been implemented to provide areas for planting to provide greater privacy between neighbouring dwellings.

Subclause 4 - The proposed development addresses the matters required to be demonstrated by sub clause (3) as set out above. The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. It is considered to meet the objectives on the basis that:

- The proposal looks to replace an existing ageing 3 bedroom single storey dwelling with a new denser two storey multi-unit dwelling, thus providing additional housing within a housing deprived area.

- The works proposed will significantly improve the design and aesthetic quality of the existing building with the built form outcome complimenting newer style properties along Condamine Street
- The strata sub-division will maintain the existing building lot in its entirety with one unit over the other. The ground floor unit will have sole access to the private garden, which will maintain the character and prevailing sub-division pattern of the single residence within the Condamine Street locality.
- The character of the locality and streetscape will be enhanced by a carefully considered design that is in scale and bulk to the rest of the street.
- The location of the subject property is ideally placed allowing direct access to existing infrastructure. Balgowlah Road is a short distance away where public transport to and from the city and local facilities and services can be accessed."

(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: The applicant's written request has adequately addressed the relevant matters.

(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: 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 17-006 dated 15 December 2017, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation to a numerical standard is not greater than 10%. As the proposal provides a variation of greater than 10% the application can be determined by the Local Planning Panel.

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 (285.65m ²)
Proposed	0.52:1 (293.6m ²)
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	2.7%

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 floor space ratio 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:

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

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

Comment: The proposed development is consistent with the bulk and scale of comparable developments within the street and locality. The proposed development is adequately sited to ensure the building runs along the site towards the rear, thereby reducing the visual bulk on the streetscape.

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

Comment: The proposed development does not unreasonably obscure important landscape and townscape features.

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

Comment: The proposed development is designed to be complementary to existing development within the streetscape, thereby providing an appropriate relationship with the existing character and landscape of the area.

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

Comment: The proposed development does not unreasonably impact upon the use or enjoyment of adjoining land or the public domain.

- (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. The subject site is zoned R1 General Residential.

What are the underlying objectives of the zone?

In assessing the developments for 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 are addressed as follows:

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

The proposed development provides an additional dwelling to serve the housing needs of the community.

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

The proposed development supports the existing variety of housing types and densities.

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

Not applicable. The proposed development retains the existing residential use of the site.

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: The proposed development provides for an appropriate level of flexibility in applying the floor space ratio development standard.

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

Comment: The proposed development results in a better outcome, as it provides additional well-serviced housing in the local area.

(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: The applicant has provided the following written request justifying the contravention of the floor space ratio development standard:

"Clause 4.6 – to vary the Floor Space Ratio (FSR) development standard.

Under Clause 4.6 of the Manly LEP 2013 we propose to justify the variation to the Floor Space Ratio (FSR) development standard.

- *Name of environmental planning instrument - Manly Council LEP 2013*
- *Zoning of land - R1 General Residential*
- *Objectives of the Zone -*
 - *To provide for the housing needs of the community.*
 - *To provide for a variety of housing types and densities.*
 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *Objectives of (FSR) development Standard -*
 - *To ensure the scale of development does not obscure important landscape features.*
 - *To minimise disruption to views to adjacent and nearby development.*
 - *To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.*
- *Development standard to be varied - Part 4.1.3 Floor Space Ratio (FSR)*
- *Development standard Clause -Manly Council LEP 2013 - Part 4.1.3 Floor Space Ratio (FSR)*
- *Numerical value of the development standard in the environmental planning instrument - 0.50:1*
- *Proposed numerical value of the development standard in the Development Application - 0.52:1*
- *Percentage variation between proposed and the environmental planning instrument - 4%*

Subclause 3 - Justification of the contravention of the Floor Space Ratio (FSR) development standard is sought by demonstrating:

- *Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case -*
The FSR site control is 0.5:1 the combined FSR for both units equates to 0.52:1 which is a small percentage increase of 4%.
The existing site area of 571.3m² has dictated a reduced housing density of 1dwelling/285.65m². Reference - Manly DCP 2013 Part 4.1.3.1 - Exceptions to FSR for Undersized Lots.
- *There are sufficient environmental planning grounds to justify contravening the development standard -*
The proposal is of a domestic scale and the bulk and scale of the units has been designed to compliment the built environment and assimilate with the streetscape. The units are replacing a single storey older style property providing an additional dwelling that is consistent with the principles of urban consolidation and will assist in reducing urban sprawl.
The units have been designed to minimise wasted space and are both modest in spatial layout.

Subclause 4 - The proposed development addresses the matters required to be demonstrated by subclause (3) as setout above. The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. It is considered to meet the objectives on the basis that:

- *The proposal looks to replace an existing ageing 3 bedroom single storey dwelling with a new denser two storey multi-unit dwelling, thus providing additional housing within a housing deprived area.*
- *The works proposed will significantly improve the design and aesthetic quality of the existing building with the built form outcome complimenting newer style properties along Condamine Street*
- *The scale of the development is of a domestic nature and complimentary to the streetscape and does not obscure any important land features.*
- *No existing views from adjacent and nearby developments have been compromised.*
- *The bulk of the proposal has been designed to allow environmental amenity, air, sunlight and privacy, to both the proposal and adjacent residential properties."*

- (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: The applicant's written request has adequately addressed the relevant matters.

- (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: 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 17-006 dated 15 December 2017, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation to a numerical standard is not greater than 10%. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Floor Space Ratio Development Standard is assumed.

Part 5 Miscellaneous Provisions

There are no relevant miscellaneous provisions under Part 5 of the Manly LEP 2013 to consider as part of this assessment.

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	Comment
6.1	Acid Sulphate Soils	Yes	Yes	The subject site is classified as Class 5 Acid Sulfate Soils. The proposed development is consistent with the objectives and provisions of Clause 6.1 of the Manly LEP 2013.
6.2	Earthworks	Yes	Yes	The proposed development is consistent with the objectives and provisions of Clause 6.2 of the Manly LEP 2013.
6.4	Stormwater Management	Yes	Yes	The proposed development is consistent with the objectives and provisions of Clause 6.4 of the Manly LEP 2013.
6.9	Foreshore Scenic Protection Area	Yes	Yes	The proposed development is consistent with the objectives and provisions of Clause 6.9 of the Manly LEP 2013.

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	✓	
Heritage – In Vicinity	NA	
Landscaping Design	✓	
Landscape/Tree Preservation	✓	

Sunlight Access and Overshadowing	✓	
Privacy and Security	✓	
Maintenance of Views	✓	

Comment:

3.1 Streetscapes and Townscapes

Streetscape

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

The proposed development softens the visual impact of the building and garage with the inclusion of landscaping on the front (eastern) elevation.

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

The proposed development is of a comparable type, bulk and scale to existing development in the street, and is therefore consistent with the streetscape.

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

The proposed development, which includes landscaping and a retaining wall on the front (eastern) elevation, is acceptable in its context.

3.3.1 Landscaping Design

Objective 1) To encourage appropriate tree planting and maintenance of existing vegetation.

The proposed development includes compliant open space and landscaping, thereby encouraging tree planting.

Objective 2) To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.

The proposed development does not unreasonably alter important landscape features and vegetation.

3.3.2 Landscape/Tree Preservation

Objective 1) To ensure that development protects and conserves the natural environment.

The proposed development satisfactorily protects and conserves significant vegetation on the subject site.

Objective 2) To protect and preserve urban bushland areas in recognition of their:

- value as part of the natural heritage;
- aesthetic value; and
- value as a recreational, educational and scientific resource.

The subject site does not contain any urban bushland.

Objective 3) To protect and prevent clearing of remnant and or rehabilitated riparian land value as a recreational, educational and scientific resource.

The subject site does not contain any riparian land.

3.4.1 Sunlight Access and Overshadowing

Objective 1) To provide equitable access to light and sunshine.

The proposed development allows for adequate sunlight access to the front of the property to the south in the morning, and the rear of the property in the afternoon. As such, the proposed development allows for equitable access to light and sunshine.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

As demonstrated by the submitted shadow diagrams, the proposed development overshadows the northern windows of the property to the south. However, given the topography of the two sites, these windows are overshadowed by the existing development. The proposed development results in overshadowing of the rear yard of the property to the south, but this dissipates in the middle of the day. As such, the proposed development retains an adequate level of sunlight to penetrate the property to the south.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

The proposed development incorporates modulation through the inclusion of balcony spaces and varied setbacks. Further, a skillion roof angled down with the topography is used, in order to reduce overshadowing impact arising from the roof form. The proposed development includes a non-compliant southern side setback. However, this is acceptable for the reasons detailed in the section of this report relating to Part 4 of the Manly DCP 2013 – Development Controls.

3.4.2 Privacy and Security

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 proposed development minimises the loss of privacy to adjacent and nearby development with the inclusion of adequate side setbacks, providing building separation for visual and acoustic privacy. In this way, the proposed development is appropriately designed for privacy and mitigates direct viewing between properties.

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 proposed development provides adequate privacy without compromising access to light and air. The outlook and views from habitable rooms and private open space is balanced in that overlooking is minimised, but views from the subject site are still available.

Objective 3) To encourage awareness of neighbourhood security.

The proposed development includes windows and balcony spaces on the front (eastern) elevation, encouraging awareness of neighbourhood security through passive surveillance.

3.4.3 Maintenance of Views

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

The proposed balcony and terrace spaces are designed to retain south eastern and south western views for the property to the north, thereby adequately retaining view sharing for the subject site and adjacent sites.

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).

The proposed development does not disrupt significant views to, from or across the site.

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.

The proposed development does not result in unreasonable view creep.

Part 4 - Development Controls

Site Area:	571.3m ²	Permitted/ Required	Proposed	Complies Yes/No
Residential Density – Area D4		300m ² of site area per dwelling	285.65m ² of site area per dwelling	No. (5% variation) See comment below.
Wall height North (Ground)		7m	3.6m	Yes
North (First)			7.13m	No. See comment below.
South (Ground)		7m	4.7m	Yes
South (First)			7.5m	No. See comment below.
Number of Storeys		2	2 plus basement	No. See comment below.
Roof height		2.5m	1m (skillion)	Yes
Setback Front		6.0m or streetscape	0m to garage 8.9m to building	No. See comment below.
North setback side – Ground		1.2m	2.05m	Yes
North setback side – First		2.37m	2.05m	No. See comment below.
South setback side – Ground		1.56m	1.35m	No. See comment below.
South setback side – First		2.5m	1.35m to stairs 2.05m to remainder of first floor	No. See comment below.
Setback Rear		8.0m	10.5m	Yes
Open space - total		Min. 55% of Site Area (314.2m ²)	65% (372.9m ²)	Yes
Open space - landscaped		Min. 35% of Total Open Space (130.5m ²)	48.8% (182m ²)	Yes
Open space - above ground		Max. 40% of Total Open Space (149.16m ²)	13.9% (51.9m ²)	Yes
Number of Endemic Trees		3	3	Yes
Private Open Space		Min. 12m ² per dwelling	>12m ² per dwelling	Yes
Car Parking – Residents		1 space per dwelling (2 spaces) Plus 0.5 spaces per 3-bed dwelling (1 space)	4	Yes

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Site Area:	571.3m ²	Permitted/ Required	Proposed	Complies Yes/No
		Total: 3 spaces		
- Visitors		0.25 spaces per dwelling: 1 space (rounded up)	0	No. See comment below.
Swimming pool height		1m	0m above ground	Yes
Swimming pool setbacks pool concourse / deck		1m	1.295m	Yes
Swimming pool setbacks water's edge		1.5m	1.5m	Yes
Fence height		1m solid / 1.5 with transparency	1.4 with transparency	Yes
Excavation		Generally 1m (except swimming pools and basement car parking) Dilapidation or Geotechnical report	4.4m for the basement car park 2m for the pool Geotechnical report submitted	Yes
Subdivision -Access and services		Access and services acceptable	Access and services are acceptable	Yes
-Prevailing subdivision pattern and natural features		Complements existing pattern	Subdivision is strata only	
-Energy efficiency		Maximise solar access	Solar access is acceptable	

Comment:

4.1.1 Dwelling Density, Dwelling Size and Subdivision

Clause 4.1.1.1 of the MDCP 2013 provides that the minimum site area per dwelling is 300m². The proposed development includes two dwellings on a 571.3m² site (1 dwelling per 285.65m²).

Objective 1) To promote a variety of dwelling types, allotment sizes and residential environments in Manly.

The proposed development maintains a variety of dwelling types, allotment sizes and residential environments in the locality, while providing additional well-serviced housing.

Objective 2) To limit the impact of residential development on existing vegetation, waterways, riparian land and the topography.

Given the arrangement of one dwelling on top of another, the proposed development includes compliant open space and landscaping, thereby limiting its impact on vegetation and the topography. The subject site does not contain waterways or riparian land.

Objective 3) To promote housing diversity and a variety of dwelling sizes to provide an acceptable level of internal amenity for new dwellings.

The proposed development includes greater than the minimum internal area required by Clause 4.1.1.1 of the MDCP 2013. The proposed development therefore provides adequate internal amenity.

Objective 4) To maintain the character of the locality and streetscape.

As detailed in the section of this report relating to Part 3 of the MDCP 2013 – General Principles of Development – Streetscape, the proposed development is complementary to and consistent with the existing streetscape.

Objective 5) To maximise the use of existing infrastructure.

Not applicable. The subject site does not include infrastructure.

LEP Clause 4.3 Height of buildings

Clause 4.1.2.1 of the Manly DCP 2013 provides that the maximum wall height for the subject site is 7m. The proposed modifications increase the wall height to 7.13m to the north and 2.5m to the south. Clause 4.1.2.1 of the Manly DCP 2013 relies on the Height of Building objectives under Clause 4.3 of the Manly LEP 2013, addressed below.

(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 building height is compliant with the height of building development standard contained within Clause 4.3 of the MLEP 2013. The height of the proposed development is consistent with existing development in the vicinity of the subject site, being predominantly two storeys. The proposed roof form is complementary to existing development in the streetscape, which includes pitched and flat roof forms.

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

Comment: The proposed development is not compliant with the floor space ratio development standard contained within Clause 4.4 of the MLEP 2013. However, the non-compliance is acceptable for the reasons detailed in the section of this report relating to Part 4 of the MLEP 2013 – Principal Development Standards – Floor Space Ratio.

- (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 development is acceptable in relation to views, for the reasons detailed in the section of this report relating to Part 3 of the MDCP 2013 – General Principles of Development – Maintenance of Views.

- (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 development is acceptable in relation to solar access, for the reasons detailed in the section of this report relating to Part 3 of the MDCP 2013 – General Principles of Development – Sunlight Access and Overshadowing.

- (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. The subject site is zoned R1 General Residential.

4.1.4 Setbacks (Side and Rear) and Building Separation

Clause 4.1.4.1 of the MDCP 2013 provides that street front setbacks must be 6m or follow the prevailing building line. The proposed development includes a garage with a nil front setback. Clause 4.1.4.2 of the MDCP 2013 requires that setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building. The proposed development seeks non-compliant north and south side setbacks.

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.

The proposed side and rear setbacks are consistent with and complementary to the existing developments within the immediate vicinity, thereby maintaining the desired spatial proportions of the street, the street edge and the landscape character of the street.

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.*

The sunlight access, privacy, maintenance of view and streetscape character impacts resulting from the proposed development are acceptable for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development. The proposed development does not unreasonably impact upon traffic conditions.

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

The proposed development is adequately sited in order to provide an appropriate level of amenity to the subject site, as well as adjacent sites.

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.*

The proposed development provides compliant landscaping and planting and does not unduly detract from the context of the site. This is detailed further in the section of this report relating to Part 4 of the Manly DCP 2013 – Development Controls – Open Space and Landscaping. The subject site does not contain urban bushland.

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

The subject site is not within an area of bushfire prone land.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Schedule 3 of the MDCP 2013 requires that the proposed development include one visitor parking space. The proposed development does not include any visitor parking.

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

The proposed development provides more spaces than required for the residents of the site (three spaces required, four provided). These spaces are located at the street level and are connected to the proposed dwellings by a lift, so are accessible. No on- or off-street street parking for residents or visitors is available to the subject site, given the context of the street, and the density of the site

does not drastically increase. As such, the proposed parking arrangements are considered adequate.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

No on- or off-street parking is available to the subject site, given the context of the street. On-street parking is not available on the portion of the street where the site is located. As such, there is no loss of on-street parking as a result of the proposed development. There is, however, a gain of four off-street parking spaces, through the introduction of the four-car garage.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

The location of the proposed garage and driveway are efficient, safe, convenient, and integrated into the design of the development. An example of a comparable development exists two properties to the north.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

The proposed garage requires substantial excavation. However, the geotechnical report submitted with the application demonstrates that the excavation is acceptable in the context of this site.

Objective 5) To ensure the width and number of footpath crossings is minimised.

The proposed development includes one footpath crossing to serve the two proposed dwellings.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

The proposed development incorporates landscaping into the proposed garage in order to soften its visual impact on the streetscape.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

The subject site is not located in a Centre. The proposed development is located within walking distance of public transport and areas accessible by bicycle.

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:

The proposed development is consistent with the Special Character Areas and Sites objectives and provisions in relation to the Foreshore Scenic Protection Area. The proposed development shall have minimal impact on the aesthetic amenity of the area.

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 relevant prescribed regulations contained within the *Environmental Planning and Assessment Regulations 2000* are addressed through the imposition of suitable conditions.

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 will not result in any unreasonable impact on the natural and built environments or any unreasonable social and economic impacts in the locality.

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

The proposed development is 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 2.3 of Council's Development Control Plan 2013 with one submission received from the following objector raising the following concerns:

Submission and Address	Main Issues raised in the submission
1. Executive Committee SP68543, 157-159 Condamine Street, Balgowlah AND Submission by Suburban Town Planners on behalf of Executive Committee SP68543	<ul style="list-style-type: none"> The proposal is not in keeping with the existing streetscape. The proposal leads to a significant increase in overshadowing. The proposal will impact on our privacy. The southern side setback is inadequate. The proposal is excessive in height and is three storeys. The proposal results in a variation to the minimum subdivision lot size and floor space ratio development standards.
2. J.F. and J. Saunders 163 Condamine Street, Balgowlah	<ul style="list-style-type: none"> The proposal is not in keeping with the existing streetscape. The proposal results in a significant increase to bulk, particularly in relation to height. The proposal will impact on our privacy. The subject site contains a sewer main.
3. K. and M. Faulder, 18 Jackson Street, Balgowlah	<ul style="list-style-type: none"> The proposal will impact on our privacy, particularly from the proposed rear upper balcony and Window 15. Notification plans did not include floor plans. The proposed building footprint is significantly increased.

Comment:

Amenity – Streetscape / Overshadowing / Privacy

The amenity impacts (including streetscape, overshadowing and privacy) of the proposal are acceptable for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development.

Southern Setback

The southern side setback is acceptable for the reasons detailed in the section of this report relating to Part 4 of the Manly DCP 2013 – Development Controls.

Height of Building

The proposed height of building is compliant with Clause 4.3 of the Manly LEP 2013. The proposal includes two storeys and a basement, which is excluded from the calculation of storeys under Clause 4.1.2.2 (c)(ii) of the Manly DCP 2013.

Sewer Main

A sewer main runs through No. 161 Condamine in the rear half of the property. However, no excavation is proposed in the vicinity of the sewer main. Further, the application was reviewed by Council's Engineer, who raised no objection to this matter.

Notification Plans

Online notification plans do not contain internal plans (such as floor plans and sections) in order to protect privacy. Floor plans are available to view in person at Council's Customer Service Centre.

Building Footprint

While the proposed building footprint is larger than the existing building footprint, the proposed development is compliant with the open space and landscaping requirements of the Manly DCP 2013.

Minimum Subdivision Lot Size

The proposed lot sizes are acceptable for the reasons detailed in the section of this report relating to Part 4 of the Manly LEP 2013 – Principal Development Standards – Minimum Subdivision Lot Size.

Floor Space Ratio

The proposed floor space ratio is acceptable for the reasons detailed in the section of this report relating to Part 4 of the Manly LEP 2013 – Principal Development Standards – Floor Space Ratio.

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

The proposed development is in 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:

The proposed development involves the creation of two dwellings. One dwelling currently exists on site. As such, a contribution of \$20,000 is applicable in relation to the additional dwelling proposed, in accordance with the Manly Section 94 Contributions Plan 2004.

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 standards contained in Clause 1.4 (Minimum Subdivision Lot Size) 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. 242/2017 for Demolition of existing dwelling house and construction of a dual occupancy, swimming pool and strata subdivision at 161 Condamine Street, Balgowlah 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. 242/2017:

Plan No. / Title	Issue/ Revision & Date	Prepared By
DA-01 Site Plan	Issue A May 2017	Cradle
DA-02 Locality & Site Analysis Plan	Issue A May 2017	Cradle
DA-03 Proposed Underground Garage Plan and Parking Layout	Issue A May 2017	Cradle
DA-04 Proposed Ground Floor Plan and Room Areas Legend	Issue A May 2017	Cradle
DA-05 Proposed First Floor Plan and Room Areas Legend	Issue A May 2017	Cradle
DA-06 Proposed Roof Plan	Issue A May 2017	Cradle
DA-07 Proposed Elevations Sheet 1 of 2	Issue A May 2017	Cradle
DA-08 Proposed Elevations Sheet 2 of 3 BASIX Spec. & Windows/Doors Legend	Issue A May 2017	Cradle
DA-09 Proposed Elevations Sheet 3 of 3	Issue A May 2017	Cradle
DA-10 Proposed Sections	Issue A May 2017	Cradle
DA-11 Swimming Pool Plan & Sections	Issue A May 2017	Cradle
DA-12 Demolition & Excavation and Fill & Erosion & Sediment Control Plan	Issue A May 2017	Cradle
DA-20 Strata Subdivision Plan Proposed Underground Garage	Issue A Jan 2018	Cradle
DA-21 Strata Subdivision Plan Proposed Ground Floor	Issue A Jan 2018	Cradle
DA-22 Strata Subdivision Plan First Floor	Issue A Jan 2018	Cradle
Context Plan	Rev. B 15 September 2017	Conzept Landscape Architects
Landscape Plan	Rev. B 15 September 2017	Conzept Landscape Architects

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Driveway Long Section Eastern Side	Issue A 8 September 2017	Greys
Driveway Long Section Centre Line	Issue A 8 September 2017	Greys
Driveway Long Section Western Side	Issue A 8 September 2017	Greys

Reference Documentation relating to Development Consent No. 242/2017:

- BASIX Certificate No. 863709M prepared by Efficient Living dated 13 October 2017
- Thermal Comfort and BASIX Assessment prepared by Efficient Living dated 13 October 2017
- Geotechnical Assessment Report prepared by Jack Hodgson Consultants Pty Limited dated 15 September 2017
- Car Park Layout and Access Advice prepared by Greys Australia Pty Ltd dated 8 September 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

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)

GENERAL CONDITIONS RELATING TO APPROVAL

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

A "Consent for use of a portion of Road Reserve" Application is required for the proposed structures to be erected within Council's Road Reserve. In this regard please contact Council's Administration Section on 9976 1517. Please note that this application must be obtained prior to issuing of the Construction Certificate.

Reason: To ensure correct authorisation for the use of Council's Road Reserve is maintained.

ANS02

The proposed footpath must be a "stand alone" structure on the road reserve and must not be attached to the proposed garage. The minimum life span of the structure shall be 100 years. Plans demonstrating compliance with this condition are to be provided to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure separation between public and private use structures.

ANS03

Prior to the issue of the Construction Certificate, an application under Section 138 of the *Roads Act 1993* is to be lodged with Roads and Maritime Services for the assessment and supervision of footpath structure, and subsequently approved.

Reason: To ensure compliance with relevant legislation.

ANS04

An Erosion and Sediment Management Plan which provides adequate measures for erosion and sediment control, must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier. The Erosion and Sediment Management Plan shall comply with the requirements for Erosion and Sediment Management plans contained with Clause 2.1.11 of the Manly Development Control Plan, 2013 and Manly Council's Guidelines for Sediment and Erosion Controls on Building Sites, 2005.

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

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 (2CD02)

A Dilapidation Report is required for this development. A photographic survey of adjoining properties detailing the physical condition of those properties, both internally and externally, including walls, ceilings, roof, structural members and other such items, is to be submitted to Council and the Accredited Certifier (where Council does not issue the Construction Certificate) prior to the issue of the Construction Certificate. This survey is to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property/ies.

All costs incurred in achieving compliance with this condition must be borne by the person entitled to act on this Consent.

If access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant must demonstrate, in writing, to Council's satisfaction attempts have been made to obtain access and/or advise the affected property owner of the reason for the survey and these attempts have been unsuccessful. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only, and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

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

4 (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.

5 (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.

6 (2CD12)

The excavation drawing must show all proposed excavation with RLs existing and proposed. The excavation drawing must include rainwater tanks and pool plant locations and showing proposed depths, and comply with the other conditions of this consent. This information must also be included on architectural drawings. The excavation drawing and other details required by this condition is to accompany the drawings lodged with the Construction Certificate.

Reason: To ensure all excavation complies with this consent.

7 (2CD13)

All plumbing and drainage, including sewerage drainage stacks, ventilation stacks and water service pipes are to be concealed within the building. Plumbing other than stormwater downpipes must not be attached to the external surfaces of the building.

Reason: To ensure the visual quality of the development.

8 (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.

9 (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 (m²)
- 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.

10 (2FP02)

Detailed drawings and specifications of all works (including but not limited to structures, road works, driveway crossings, footpaths and stormwater drainage) within existing roads, must be submitted to and approved by Council under the Roads Act 1993, before the issue of any Construction Certificate. Specific works include:

- 1) Full width vehicular crossings having a maximum width, at the back of layback, and in accordance with the current policy of Council and Specifications for the construction of vehicle crossings; and
- 2) Longitudinal sections for both sides of the vehicular crossing and driveway commencing at the centre line of the road carriageway must be provided for assessment. Gradients and transitions must be in accordance with Australian Standard AS 2890.1 – 2004, Part 1 – Off-Street Car Parking. The driveway profile submitted to Council must be to scale at 1:25 (for template checking purposes) and contain all relevant details: reduced levels, proposed grades and distances.

Driveway to be designed to provide for existing or future footpaths across driveway, in accordance with Council's Specification for Civil Infrastructure Works, Developments & Subdivisions 2003 and Australian Standard AS 1428.1:2001 - Design for access and mobility.

Reason: To facilitate suitable vehicular access to private sites.

11 (2FP04)

The pedestrian footpaths and pavements in the streets surrounding the proposed development are to be constructed as per Manly Council Paving Design Guidelines as amended. The design details are to be submitted with the Construction Certificate application for approval by Council prior to the issue of the Construction Certificate.

Reason: To ensure appropriate quality of public infrastructure arising from the development works.

12 (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.

13 (2MS04)

Drawings in accordance with this approval are to be submitted with the Construction Certificate Application to indicate finished surface levels at 3m intervals around the building. All floor levels are to be shown in plan, section and elevation, and roof and gutter heights to Australian Height Datum.

Reason: To ensure that the development is constructed in accordance with the approved drawings.

14 (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.

15 (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.

16 (2PT03)

The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1-2004.

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

17 (2SP01)

All of the following are to be satisfied in relation to the proposed swimming pool:

- 1) The swimming pool is to be surrounded by a child-resistant barrier in accordance with the Swimming Pools Amendment Act 2009 and Regulations 2008 which:
 - separates the swimming pool from any residential building situated on the property and from any place adjoining the property, and
 - is designed, constructed, installed and maintained in accordance with the standards prescribed by the Regulations and appropriate Australian Standards.
- 2) All surface waters from non-pervious areas surrounding the swimming pool must be collected and disposed of to the stormwater system.
- 3) Windows giving access to the pool areas must be made child safe and comply with the following:
 - Window opening is to be restricted by an approved means so that a round bar 105mm in diameter cannot be passed through the opening or the window is to be protected by a child safe grille.

However if the restricted opening of such windows means that they will no longer meet the natural ventilation requirements of the Building Code of Australia, then only a child safe grille is permissible.

- 4) The proposed pool gates are to be mounted so that:
 - they are clear of any obstruction that could hold the gate open, and
 - when lifted upward or pulled downward, movement of the gate does not release the latching device, unhinge the gate or provide a ground clearance greater than 100mm; and
 - they open outwards from the pool.

Reason: To comply with Australian Standard AS 1926 and provide a reasonable level of child safety

18 (2SP02)

A railing or other safety measures or devices are to be erected around the sides of the pool surround structure where height above natural ground level exceeds 900mm. All details of the necessary device are to be submitted to and approved by the Council/Accredited Certifier prior to issue of the Construction Certificate.

Reason: To ensure the safety of persons using those walkways.

19 (2SP03)

The backwash of Swimming Pool water must be discharged to Sydney Waters' sewer in accordance with Australian/New Zealand Standard AS/NZS 3500.

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

Reason: To ensure compliance with legislation and Australian Standards and to protect public health and amenity.

20 (2SP04)

Any mechanical plant associated with the swimming pool and spa shall be centrally located within the site, away from the boundaries and acoustically treated so the noise from the machinery is not audible at the property boundary. Details are to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the acoustic amenity of the neighbouring residents.

21 (2SP05)

Spa pools or the like are to be provided with approved-type safety outlet covers in accordance with Australian Standard AS 2610 (Spa Pools), and details of the outlet areas are to be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate.

Reason: To comply with Australian Standards and provide a reasonably level of child safety.

22 (2TC01)

Details of the method of termite protection which will provide whole of building protection, inclusive of structural and non-structural elements must be submitted to the Council / Accredited Certifier prior to issue of the Construction Certificate. Attention is drawn to the provisions of Australian Standard AS 3660.1 - 2000 Termite management – New building work, and to the Manly Code for the Protection of Buildings Against Termite Attack 1996.

Reason: To protect the building from possible termite damage.

23 (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

24 (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.

25 (3CD02)

Demolition must be carried out by a registered demolition contractor. Documentary evidence of registration must be submitted to Council prior to the commencement of demolition work.

Reason: To ensure demolition is carried out in an appropriate manner that is non-disruptive to the locality and the public.

26 (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.

27 (3FP01)

The applicant must complete an application form and pay applicable fees for an application to Council for the construction of a Vehicular Crossing, for the design, specification and inspection by Council. Applications are to be made a minimum of two (2) working days prior to commencement of proposed works on Council's property.

Reason: To provide suitable vehicular access to private sites, without disruption to pedestrian and vehicular traffic.

28 (3LD01)

All healthy trees and shrubs identified for retention on the submitted landscape drawing are to be suitably marked for protection before any construction works start.

Reason: To ensure the trees conditioned to stay on the site are suitably protected during any construction works.

29 (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.

30 (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

31 (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.

32 (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.

33 (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.

34 (4CD03)

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

Reason: To maintain sanitary conditions on building sites.

35 (4CD06)

All construction works must be strictly in accordance with the Reduced Levels (RLs) as shown on the approved drawings. A copy of approved drawings should be kept at site. Certification from a registered surveyor is to be submitted to the Principal Certifying Authority during construction to confirm floor and finished ridge levels.

Reason: To ensure compliance with the consent.

36 (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.

37 (4FP01)

The existing footpath level and grade at the street alignment of the property must be maintained.

Reason: To ensure appropriate access and infrastructure protection.

38 (4LD02)

All healthy trees and shrubs identified for retention on the drawing are to be:

- (a) suitably protected from damage during the construction process, and
- (b) retained unless their removal has been approved by Council.

Reason: This is to ensure that the trees on the site which do not have approval to be removed on the site are suitably protected during any construction works.

Internal Note: This condition is to be imposed with 3LD01.

39 (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.

Reason: To prohibit the unnecessary damage or removal of trees without permission from Council during any construction.

40 (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.

41 (4LD05)

Trees and shrubs liable to damage (including, but not limited to street trees) are to be protected with suitable temporary enclosures for the duration of the works. These enclosures are to only be removed when directed by the Principal Certifying Authority.

The enclosures are to be constructed out of F62 reinforcing mesh 1800mm high wired to 2400mm long star pickets, driven 600mm into the ground and spaced 1800mm apart at a minimum distance of 1000mm from the tree trunk.

Reason: To ensure protection of the trees on the site which could be damaged during any development works and to outline the type of protection.

42 (4LD07)

Where development/construction necessitates the pruning of more than 10% of existing tree canopy, a permit application must be lodged with the Council's Civic Services Division, subject to the Tree Preservation Order 2001.

Reason: To ensure those trees are maintained appropriately and compliance with Australian Standard AS 4373:2007 – Pruning of Amenity Trees.

43 (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

44 (5FP01)

All surplus vehicular crossings and/or kerb laybacks must be removed and the kerb and nature strip reinstated prior to issue of the Occupation Certificate.

Reason: To provide on-street parking, suitable vehicular access to private sites, and infrastructure protection.

45 (5FR01)

An automatic fire detection and alarm system must be installed in the proposed dwelling in accordance with the requirements of the Building Code of Australia.

Reason: To comply with the Environmental Planning and Assessment Act 1979.

46 (5LD01)

A qualified Landscape Consultant is to submit a Certificate of Practical Completion to the Principal Certifying Authority prior to the issue of the Occupation Certificate, stating the work has been carried out in accordance with the approved Landscape Drawing and a maintenance program has been established.

Reason: This is to ensure the landscaping is planted in accordance with the drawing and maintained appropriately.

47 (5LD02)

Evidence of an agreement for the maintenance of all plants for a period of twelve (12) months from the date of practical completion of the building is to be provided to the Principal Certifying Authority prior to issue of the final Occupation Certificate.

Reason: To ensure landscaping will be appropriately maintained.

48 (5SP01)

All protective fencing and gates are to be in accordance with Australian Standard AS 1926 prior to the pool being filled with water. The fence is to be a minimum of 1200mm in height and posts and/or supports are to be firmly fixed or encased in such a way that the posts/support are unable to be removed easily. The fence is not to be removed or altered at any time without the prior approval of Council. No water can be in the swimming pool until the required protective fencing has been inspected and approved by Council.

Reason: To comply with Australian Standard AS1926 and provide a reasonable level of child safety.

49 (5TC01)

Prior to issue of the Occupation Certificate, a durable termite protection notice must be permanently fixed to the building in a prominent location detailing the form of termite protection which has been used in accordance with the Manly Code for the protection of Buildings against Termite Attack.

Reason: To inform owners and future owners of the type of termite protection installed and of the need for regular inspections.

ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT

50 (6LP03)

Landscaping is to be maintained in accordance with the approved Landscaping Drawing.

Reason: This is to ensure that landscaping is maintained appropriately.

51 (6LP04)

Leighton Green Cypress Cupressocyparis leylandii or any of its cultivars, must not be planted on the site for the life of the development. In the event of any inconsistency between this condition and the development application documents, this condition will prevail to the extent of the inconsistency.

Reason: To reduce the potential for adverse amenity effects such as overshadowing, loss of views, and loss of plant diversity.

52 (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.

53 (6NL03)

The ongoing use of the premises/property must not give rise to 'offensive noise' as defined under the provisions of the Protection of the Environment Operations Act 1997.

Reason: To ensure compliance with legislation and to protect public health and amenity.

54 (6NL12)

Swimming pool and spa pumps must be installed and operated at times so as not to cause 'offensive noise' as defined by the Protection of the Environment Operation Act 1997. Swimming pool and spa pumps must not be audible in nearby dwelling between 8:00PM to 7:00AM Monday to Friday, and 8:00PM to 8:00AM on Saturdays, Sundays and public holidays.

Reason: To ensure compliance with legislation and to protect the acoustic amenity of neighbouring properties.

55 (6WM10)

The operation of the premises must be conducted in a manner that does not pollute waters as defined by the Protection of the Environment Operations Act, 1997.

Reason: To ensure compliance with legislation and to protect public health and amenity.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF ANY SUBDIVISION CERTIFICATE**ANS05**

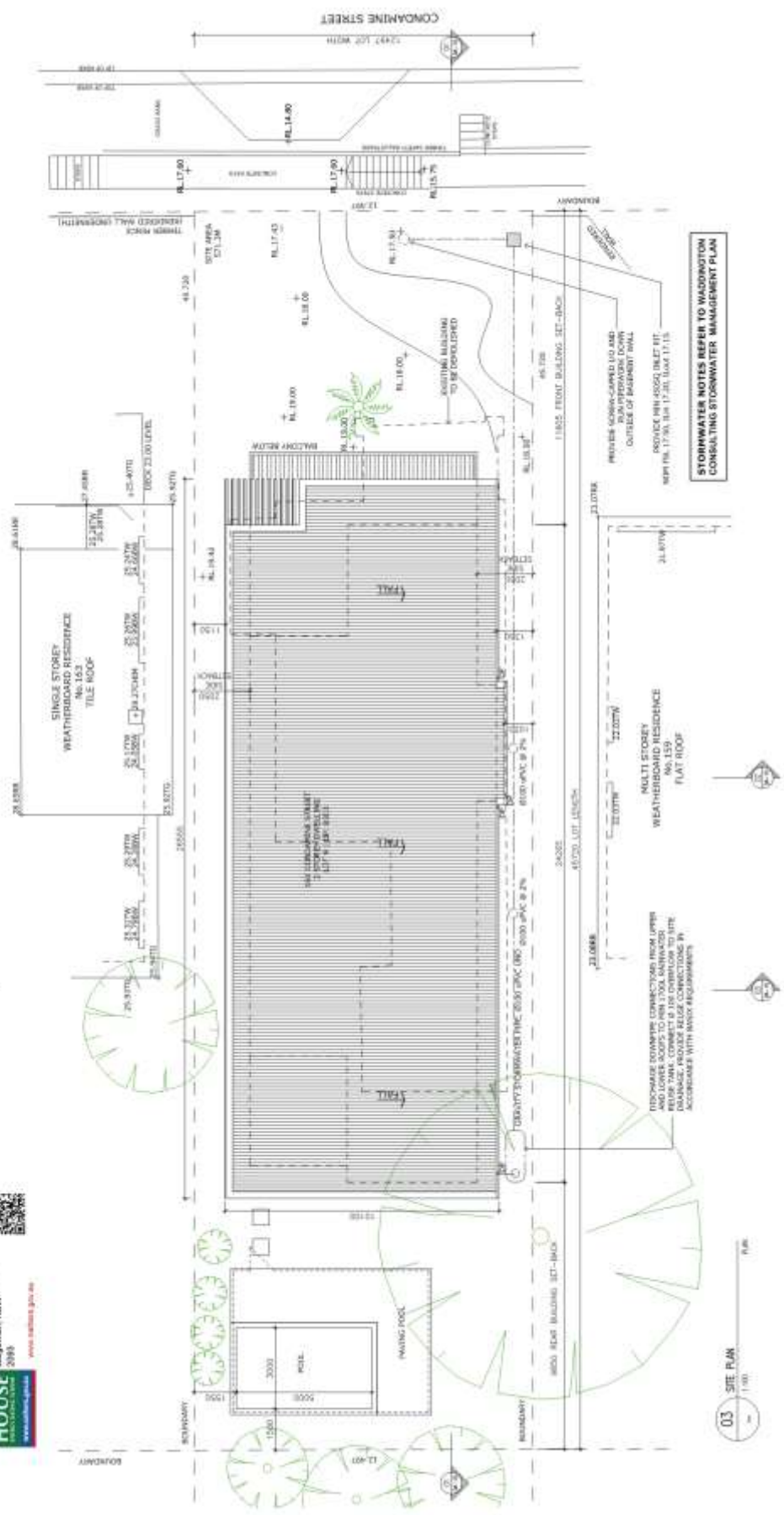
Prior to the issue of the Subdivision Certificate, a completed Subdivision Certificate form, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919 are to be submitted to Council. Nine copies of the final plan of subdivision are to be submitted. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

DA APPROVAL

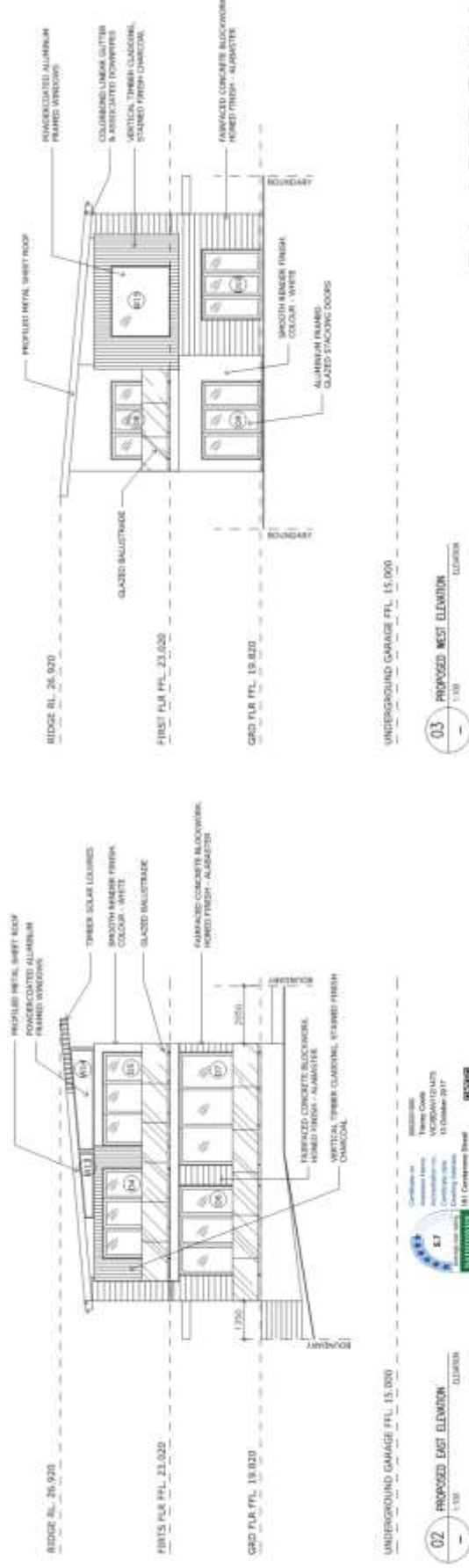
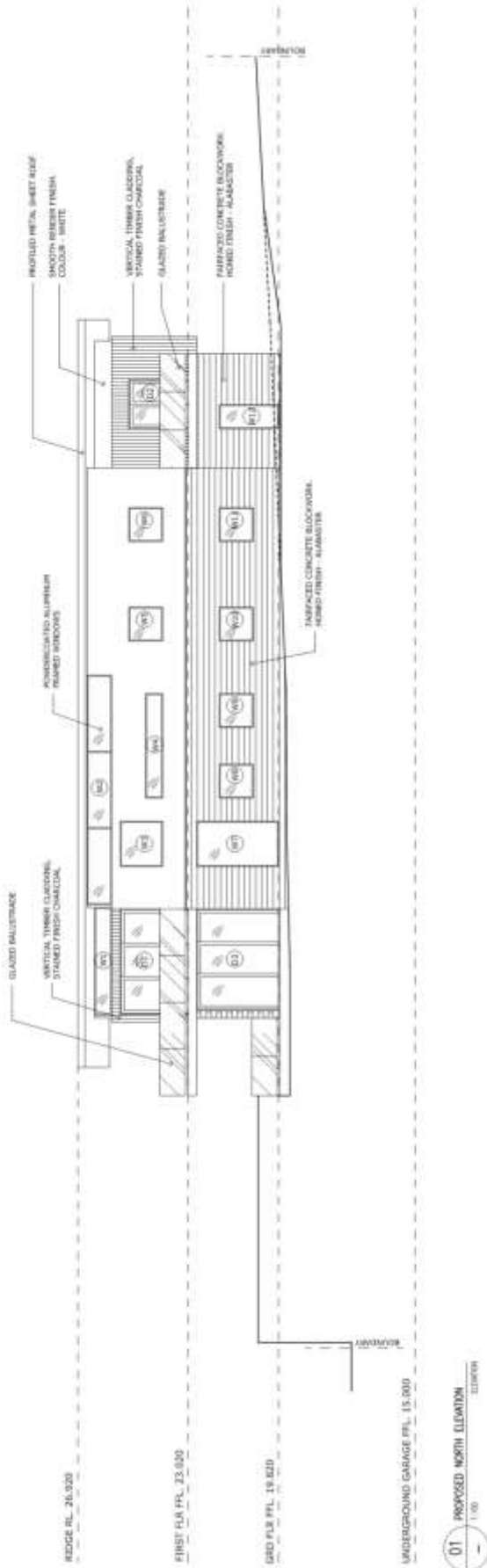
	CLIENT GEORGE CORNWELL	PROJECT LOT 9 DP8303 161 CONDOMINE ST BALGOWLAH, NSW 2093	DRAWING TITLE SITE PLAN	REVISION DETAILS	
				JOB REF: 307 - CONDOMINE STREET SCALE: 1:100 DATE: MAY 2017 DRAWN: A	DRAWING NO.: DA-01 TABLE: A

Certificate no. 800221880
 Assessor Name: Tracey Cooke
 Accreditation no. VIC-8041121479
 Certificate date: 13 October 2017
 Drawing Address: 161 Condomine Street Balgowlah, NSW 2093

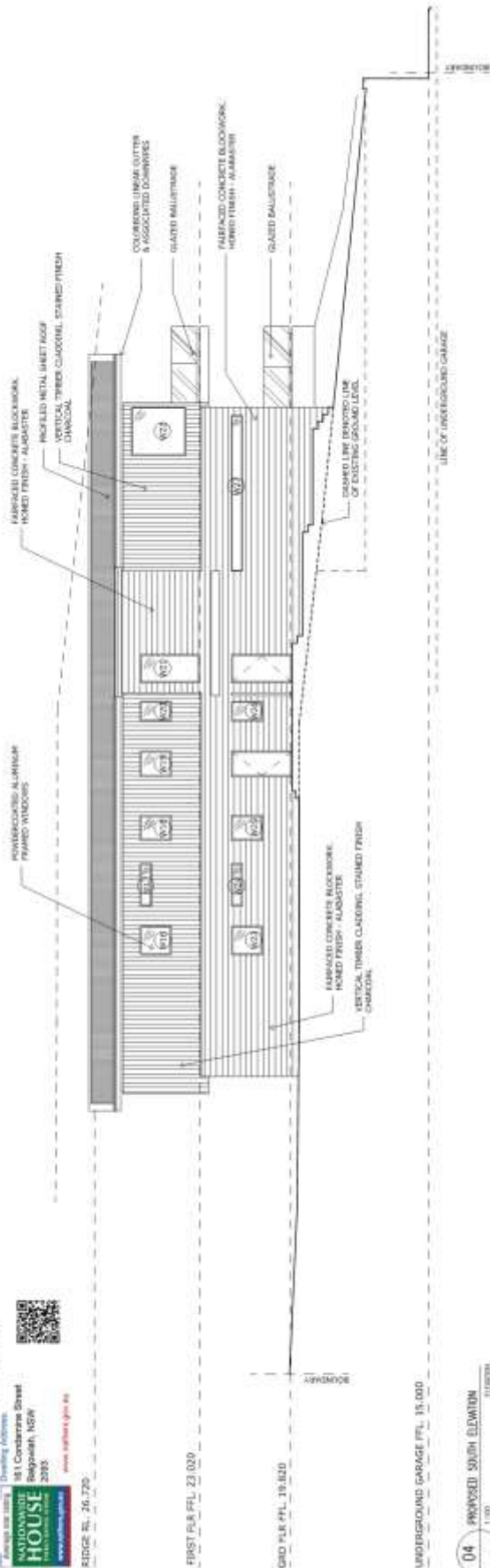
STORMWATER NOTES REFER TO WADINGTON CONSULTING STORMWATER MANAGEMENT PLAN

03 SITE PLAN
1:100



DA APPROVAL

 cradle ARCHITECTS 100-102 Victoria Road Sydney NSW 2000 T: 02 9239 4000 F: 02 9239 4001 E: info@cradlearchitects.com.au W: www.cradlearchitects.com.au	CLIENT GEORGE CORNWELL	PROJECT LOT 9 DP8303 161 CONDOMINE ST BALGOWLAH, NSW 2093	DRAWING TITLE PROPOSED ELEVATIONS SHEET 1 OF 2	REVISION DETAILS:	
				DATE 10/06/18 BY DA-07	TABLE A



THERMAL AND BASIX COMFORT SPECIFICATIONS	
GLAZING / DOORS / WINDOWS / CLIMATE	ALUMINIUM OR TIMBER FRAMED DOUBLE LOW-E TINTED GLAZING LEVEL 1 (100% MINIMUM INSULATION ONLY VALUES) (GLASS AND FRAME)
ROOF	RAVED METAL ROOF WITH AN UNCOATED 80 TOL BACKED BLANKET OR EQUIVALENT (R1.52 UP & R1.38 DOWN) EXTERNAL CLADDING LIGHT CEILING INSULATION (R1.52 UP & R1.38 DOWN)
CEILING	PLASTERBOARD CEILING WHERE METAL ROOF IS OVER A PERIMETER INSULATION (INSULATION ONLY VALUES) PLASTERBOARD CEILING WHERE BALCONY IS OVER A PERIMETER INSULATION (INSULATION ONLY VALUES) PLASTERBOARD CEILING NO INSULATION WHERE REQUIRED UNITS ARE ABOVE
EXTERNAL WALLS	CONCRETE BLOCKWORK WITH R2.0 INSULATION (INSULATION ONLY VALUE) CONCRETE BLOCKWORK WITH R2.0 INSULATION (INSULATION ONLY VALUE) LIGHTWEIGHT TIMBER CLAD WITH R2.0 INSULATION (INSULATION ONLY VALUE) EXTERNAL CLADDING: DEFAULT
INTER TENANT WALLS	CONCRETE BLOCKWORK WALLS ADJACENT TO HALLWAYS WITH R2.0 INSULATION (INSULATION ONLY VALUE)
WALL WITHIN DWELLINGS	PLASTERBOARD ON STUDS, NO INSULATION REQUIRED
FLOOR	GRAND LEVEL: CONCRETE SLAB ON GRAVEL, NO INSULATION REQUIRED GROUND LEVEL: SUSPENDED CONCRETE SLAB OVER GARAGE, NO INSULATION REQUIRED LEVEL 1: SUSPENDED CONCRETE SLAB ON LEVEL 1 OPEN TO AIR WITH R1.5 (INSULATION ONLY VALUE) LEVEL 1: CONCRETE FLOOR BETWEEN LEVELS TWO INSULATION REQUIRED
FLOOR COVERINGS	CARRY TO BEDROOMS, TILES TO WET AREAS AND TIMBER FLOOR DECKING TO ALL OTHER AREAS
EXTERNAL SHADING	SHADING AS PER STAINED PLANS
HOT WATER SYSTEM	RESIDENTIAL GAS INSTANTaneous SYSTEMS TO ALL UNITS - 5 STARS
ALTERNATIVE WATER	INSTALL RAINWATER TANK, MINIMUM LITRE CAPACITY COLLECTED FROM RVL, RPLC ROOF AREA DOWN CONNECTED TO: LAUNDRY, TOILET AND LAUNDRY
ALTERNATIVE ENERGY	2.5 KW PHOTOVOLTAIC

WINDOWS LEGEND			
AREA (M ²)	DIMENSIONS (mm)	GLASS (mm)	GLASS (mm)
W1	2.00	1800W x 1200H	1000W x 1100H
W2	7.07	1800W x 1100H	1000W x 1100H
W3	2.40	1800W x 1200H	1000W x 1100H
W4	2.22	1800W x 1200H	1000W x 1100H
W5	1.44	1200W x 1200H	1000W x 1100H
W6	1.44	1200W x 1200H	1000W x 1100H
W7	1.44	1200W x 1200H	1000W x 1100H
W8	1.44	1200W x 1200H	1000W x 1100H
W9	1.44	1200W x 1200H	1000W x 1100H
W10	1.44	1200W x 1200H	1000W x 1100H
W11	1.44	1200W x 1200H	1000W x 1100H
W12	1.44	1200W x 1200H	1000W x 1100H
W13	1.44	1200W x 1200H	1000W x 1100H
W14	1.44	1200W x 1200H	1000W x 1100H
W15	1.44	1200W x 1200H	1000W x 1100H
W16	1.44	1200W x 1200H	1000W x 1100H
W17	1.44	1200W x 1200H	1000W x 1100H
W18	1.44	1200W x 1200H	1000W x 1100H
W19	1.44	1200W x 1200H	1000W x 1100H
W20	1.44	1200W x 1200H	1000W x 1100H
W21	1.44	1200W x 1200H	1000W x 1100H
W22	1.44	1200W x 1200H	1000W x 1100H
W23	1.44	1200W x 1200H	1000W x 1100H
W24	1.44	1200W x 1200H	1000W x 1100H
W25	1.44	1200W x 1200H	1000W x 1100H
W26	1.44	1200W x 1200H	1000W x 1100H
W27	1.44	1200W x 1200H	1000W x 1100H
W28	1.44	1200W x 1200H	1000W x 1100H
W29	1.44	1200W x 1200H	1000W x 1100H
W30	1.44	1200W x 1200H	1000W x 1100H
W31	1.44	1200W x 1200H	1000W x 1100H
W32	1.44	1200W x 1200H	1000W x 1100H
W33	1.44	1200W x 1200H	1000W x 1100H
W34	1.44	1200W x 1200H	1000W x 1100H
W35	1.44	1200W x 1200H	1000W x 1100H
W36	1.44	1200W x 1200H	1000W x 1100H
W37	1.44	1200W x 1200H	1000W x 1100H
W38	1.44	1200W x 1200H	1000W x 1100H
W39	1.44	1200W x 1200H	1000W x 1100H
W40	1.44	1200W x 1200H	1000W x 1100H
W41	1.44	1200W x 1200H	1000W x 1100H
W42	1.44	1200W x 1200H	1000W x 1100H
W43	1.44	1200W x 1200H	1000W x 1100H
W44	1.44	1200W x 1200H	1000W x 1100H
W45	1.44	1200W x 1200H	1000W x 1100H
W46	1.44	1200W x 1200H	1000W x 1100H
W47	1.44	1200W x 1200H	1000W x 1100H
W48	1.44	1200W x 1200H	1000W x 1100H
W49	1.44	1200W x 1200H	1000W x 1100H
W50	1.44	1200W x 1200H	1000W x 1100H
W51	1.44	1200W x 1200H	1000W x 1100H
W52	1.44	1200W x 1200H	1000W x 1100H
W53	1.44	1200W x 1200H	1000W x 1100H
W54	1.44	1200W x 1200H	1000W x 1100H
W55	1.44	1200W x 1200H	1000W x 1100H
W56	1.44	1200W x 1200H	1000W x 1100H
W57	1.44	1200W x 1200H	1000W x 1100H
W58	1.44	1200W x 1200H	1000W x 1100H
W59	1.44	1200W x 1200H	1000W x 1100H
W60	1.44	1200W x 1200H	1000W x 1100H
W61	1.44	1200W x 1200H	1000W x 1100H
W62	1.44	1200W x 1200H	1000W x 1100H
W63	1.44	1200W x 1200H	1000W x 1100H
W64	1.44	1200W x 1200H	1000W x 1100H
W65	1.44	1200W x 1200H	1000W x 1100H
W66	1.44	1200W x 1200H	1000W x 1100H
W67	1.44	1200W x 1200H	1000W x 1100H
W68	1.44	1200W x 1200H	1000W x 1100H
W69	1.44	1200W x 1200H	1000W x 1100H
W70	1.44	1200W x 1200H	1000W x 1100H
W71	1.44	1200W x 1200H	1000W x 1100H
W72	1.44	1200W x 1200H	1000W x 1100H
W73	1.44	1200W x 1200H	1000W x 1100H
W74	1.44	1200W x 1200H	1000W x 1100H
W75	1.44	1200W x 1200H	1000W x 1100H
W76	1.44	1200W x 1200H	1000W x 1100H
W77	1.44	1200W x 1200H	1000W x 1100H
W78	1.44	1200W x 1200H	1000W x 1100H
W79	1.44	1200W x 1200H	1000W x 1100H
W80	1.44	1200W x 1200H	1000W x 1100H
W81	1.44	1200W x 1200H	1000W x 1100H
W82	1.44	1200W x 1200H	1000W x 1100H
W83	1.44	1200W x 1200H	1000W x 1100H
W84	1.44	1200W x 1200H	1000W x 1100H
W85	1.44	1200W x 1200H	1000W x 1100H
W86	1.44	1200W x 1200H	1000W x 1100H
W87	1.44	1200W x 1200H	1000W x 1100H
W88	1.44	1200W x 1200H	1000W x 1100H
W89	1.44	1200W x 1200H	1000W x 1100H
W90	1.44	1200W x 1200H	1000W x 1100H
W91	1.44	1200W x 1200H	1000W x 1100H
W92	1.44	1200W x 1200H	1000W x 1100H
W93	1.44	1200W x 1200H	1000W x 1100H
W94	1.44	1200W x 1200H	1000W x 1100H
W95	1.44	1200W x 1200H	1000W x 1100H
W96	1.44	1200W x 1200H	1000W x 1100H
W97	1.44	1200W x 1200H	1000W x 1100H
W98	1.44	1200W x 1200H	1000W x 1100H
W99	1.44	1200W x 1200H	1000W x 1100H
W100	1.44	1200W x 1200H	1000W x 1100H

DOORS LEGEND	
AREA (M ²)	DIMENSIONS (mm)
D1	1000W x 2100H
D2	1000W x 2100H
D3	1000W x 2100H
D4	1000W x 2100H
D5	1000W x 2100H
D6	1000W x 2100H
D7	1000W x 2100H
D8	1000W x 2100H
D9	1000W x 2100H
D10	1000W x 2100H
D11	1000W x 2100H
D12	1000W x 2100H
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D36	1000W x 2100H
D37	1000W x 2100H
D38	1000W x 2100H
D39	1000W x 2100H
D40	1000W x 2100H
D41	1000W x 2100H
D42	1000W x 2100H
D43	1000W x 2100H
D44	1000W x 2100H
D45	1000W x 2100H
D46	1000W x 2100H
D47	1000W x 2100H
D48	1000W x 2100H
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D91	1000W x 2100H
D92	1000W x 2100H
D93	1000W x 2100H
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D98	1000W x 2100H
D99	1000W x 2100H
D100	1000W x 2100H

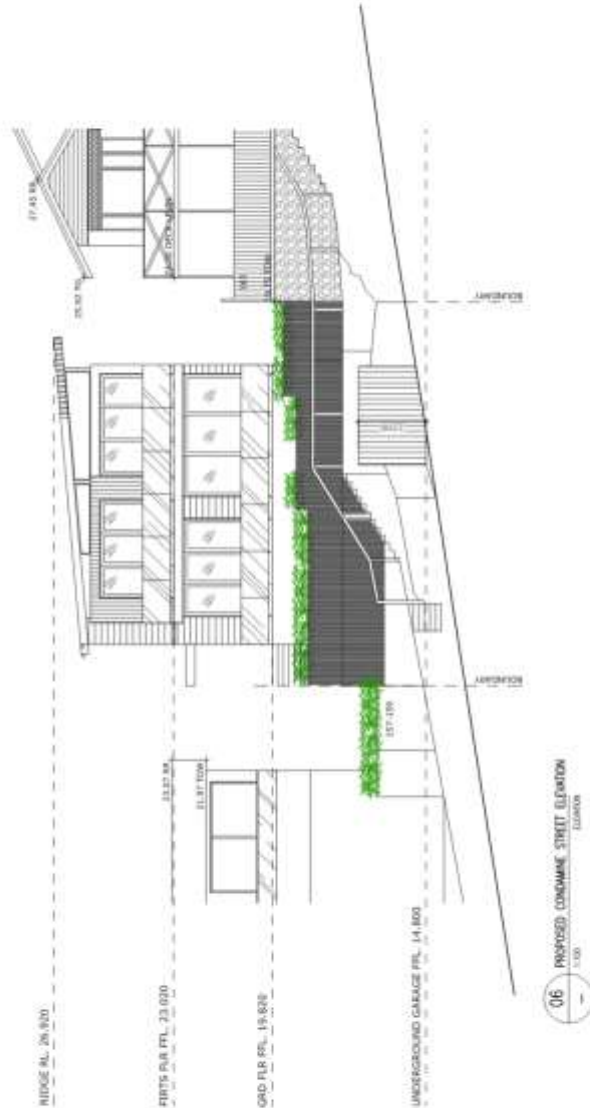
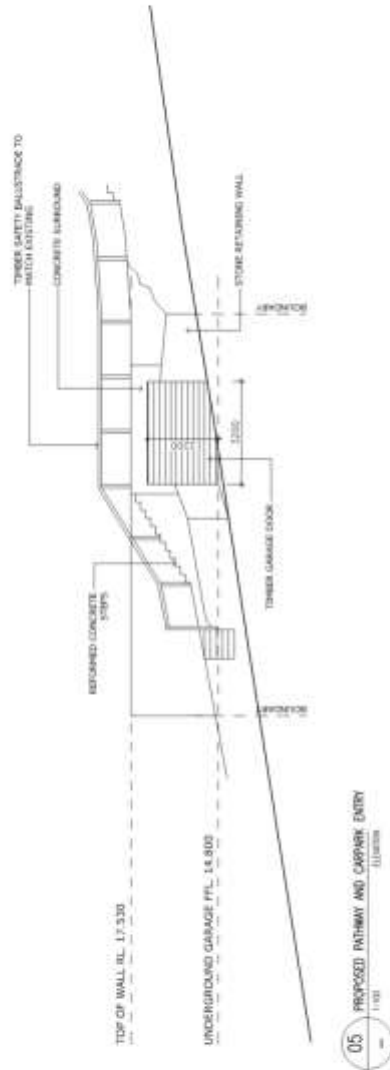
DA APPROVAL

	CLIENT GEORGE CORNWELL	PROJECT LOT 9 DPB303 161 CONDAMINE ST BALGOWLAH, NSW 2093	DRAWING TITLE PROPOSED ELEVATIONS SHEET 2 OF 3 BASIX SPEC. & WINDOWS/DOORS LEGEND	DATE 10 MAY 2017	SCALE 1:100	TABLE A
	DRAWING NO. DA-08					



Certificate no.:
1000001000
Assessor Name:
Trinity Cook
Accreditation no.:
VIC0000121473
Certificate valid
till October 2017

161 Condamine Street
Balgowlah, NSW
2093



DA APPROVAL

CLIENT	PROJECT	DRAWING TITLE	REVISION DETAILS			
			NO. REF	DATE	DESCRIPTION	BY
GEORGE CORNWELL	LOT 9 DP8303 161 CONDOMINE ST BALGOWLAH, NSW 2093	PROPOSED ELEVATIONS SHEET 3 OF 3	DA-09	10/05/17	DA-09	A
			DA-09	10/05/17	DA-09	A



ITEM 3.4	DA260/2017 - 9A LEWIS STREET BALGOWLAH HEIGHTS - DEMOLITION WORKS AND TWO LOT TORRENS TITLE SUBDIVISION
REPORTING OFFICER	MAX DUNCAN
TRIM FILE REF	2018/167751
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Subdivision Plan

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA260/2017 for demolition works and two lot Torrens Title subdivision at Lot B DP 407195, 9A Lewis Street, Balgowlah Heights for the reasons outlined in the Assessment Report.



Northern Beaches Local Planning Panel Report

2017/518150

DA #	260/2017
Site Address	9A Lewis Street, Balgowlah Heights (Lot B , DP 407195)
Proposal	Demolition works and two lot Torrens Title subdivision.
Officer	Max Duncan

SUMMARY:

<u>Application Lodged:</u>	15 November 2017
<u>Applicant:</u>	James George (C/O Matthew Choi, Tomasy Planning)
<u>Owner:</u>	James George and Joshua Thompson
<u>Estimated Cost:</u>	\$35,000.00
<u>Zoning:</u>	MLEP, 2013 – R2 Low Density Residential
<u>Heritage:</u>	Not applicable
<u>NSW LEC:</u>	Not applicable
<u>Notification:</u>	16 November 2017- 4 December 2017 21 December 2017- 29 January 2018
<u>Submissions received:</u>	One (1)
<u>Site Inspected:</u>	12 December 2017
<u>LEP (4.6) Variations proposed:</u>	Clause 4.1- Minimum Subdivision Lot Size
<u>DCP Variations proposed:</u>	Residential Density
<u>Recommendation:</u>	Approval

Subject Property and surrounding area



Image 1- Subject site and surrounding development

R1, R2, R3, E3 & E4 Zones

1 of 17

The subject property is commonly known as 9A Lewis Street, Balgowlah and legally known as Lot B in DP 407195. The site is located on the western side of Lewis Street. The property is irregular in shape and has a frontage of 4.9 m to Lewis Street, an average depth of 77m and an overall site area of 1214.7m². The property currently contains a single storey dwelling with vehicular access via an existing driveway from Lewis Street. The property slopes from north-east corner to the south-west corner approximately 5.45m

The area is characterised by residential development typically single and two storey dwelling houses.

Property Burdens and Constraints

A drainage easement runs through the subject site to Beatrice Street.

Site History/Background

No record of development available on Council record

Description of proposed development

The demolition of the existing dwelling and two lot torrens title subdivision.

Internal Referrals

Engineering Comments

Council's Engineer has commented on the proposal as follows:

"The applicant proposed to subdivide the existing Lot into two lots. The proposed vehicular access and stormwater design have been assessed. They both have been considered as satisfactory."

Council's Engineer offered no further comment or objection 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 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) and Clause 21 (relating to biodiversity, ecology and environmental protection) 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 R2 Low Density Residential under the Manly LEP 2013. The proposed development is considered permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

Zone R2 Low Density Residential

Objectives of zone

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

The development provides for the housing needs of the community in providing an additional residential allotment that is capable of providing residential accommodation for the community.

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

The development is located within the R2 Low Density Residential zone and will provide a new residential allotment. In this regard, this objective is not applicable.

Part 4 Principal development standards

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

4.	Principal Development Standards	Requirement	Proposed	Complies Yes/No	Comments
4.1	Minimum subdivision lot size	500m ²	<p>Lot 1 (Front allotment) = 430.2m² exclusive of the access handle (78.7sqm)</p> <p>Lot 2 (rear allotment) = 500.1m² exclusive of the access handle (205.7sqm)</p>	<p>No</p> <p>Yes</p>	Refer to Clause 4.6.

4.6 Exceptions to development standards

Minimum Subdivision Lot Size

The following assessment of the variation to Clause 4.1 – Minimum subdivision lot size 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	500m ²
Proposed	<p>Lot 1- 430.2m²</p> <p>Lot 2- 500.1m²</p>
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	13.96% for Lot 1

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 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 subdivision lot size' of the MELP 2013 are:

(1) 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 proposed two lot subdivision provides two lots that are consistent with the pattern, size and configuration of existing lots in the locality. Lot 1 has total site area of 430.2m and Lot 2 has a site area of 500.1m². Nos. 2, 4 and 6 Lewis Street which are located on the eastern side of Lewis Street have a similar lot size to what is proposed in this application. No. 2 Lewis Street has a site area of 432.8m², No. 4 Lewis Street has a total site area of 412.7m² and No. 6 Lewis Street has a site area of 512.2m². The surrounding area contains many examples of battle axe lot configurations and the proposal has also demonstrated through indicative dwelling designs how two dwellings could be provided on each lot in a manner consistent with the controls under the Manly LEP and Manly DCP.

Additionally the site utilises existing battle-axe configuration of 9a Lewis Street, with none of the proposed new lots fronting any street or public place. The existing access handle on site will serve both Lot 1 and 2.

Immediately adjoining the north of the subject site is a reserve which provides additional physical separations between the proposed two lots and Balgowlah Heights Public School.

Therefore, the proposed subdivision would be sufficient to provide a useable building and reasonable levels of landscaping.

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

Comment: The proposed lots are proposed in a battle-axe lot, and will not be visible from the Lewis and Beatrice Street. The existing character of the streetscape will remain unchanged. The existing subdivision pattern is varied with adjoining examples of battle axe configurations. To the north and east of the subject site there are a variety of smaller and larger lots, which contribute to a varied subdivision pattern. As such, the proposed subdivision would be consistent with the existing subdivision pattern.

- (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 subdivision in this circumstance will not have any unreasonable impacts upon vegetation, topography and the foreshore. Whilst within the foreshore scenic protection area, the separation between the subject site and the foreshore would protect views and visual amenity from adjoining properties, despite the subdivision.

- (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 allotments are in vicinity of the public transport (Sydney bus routes) as well as local facilities such as the Balgowlah Heights shopping village.

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 R2 Low Density Residential zone.

The underlying objectives of Zone R2 Low Density Residential:

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

Comment: The proposed development is for the subdivision of an existing residential lot. Indicative dwelling footprints show that low density residential development can be provided on site.

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

Comment: The proposal subdivision is for future residential use.

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: The proposal seeks to vary the Clause 4.1 - Minimum Subdivision Lot Size Development Standard. In doing so, the variations provide an appropriate degree of flexibility with regard to the proposed development, in allowing the proposal to create additional residential allotments for the Balgowlah Heights area which will provide for the housing needs of the community.

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

Comment: The variation sought to Clause 4.1 Minimum Subdivision Lot Size Development Standard provides a better outcome in term of providing an increased residential allotments with the Low density area. Lot 1 which has a size of 430.2m² or 13.96% variation is consistent with the surrounding lots in terms of subdivision size and pattern.

(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: A written request has been provided which gives sufficient reasoning as to why the compliance with the Minimum Subdivision Lot Size Development Standard is both unreasonable and unnecessary and that there are sufficient grounds to justify contravening the standard. This includes the following reasoning:

"8.3.2 Is compliance with the Development Standard unreasonable or unnecessary in the circumstances of the case?"

Full compliance with the minimum subdivision lot size requirements of 500sqm for each lot is considered unreasonable or unnecessary in the circumstances of the case for the following reasons:

- The proposed land subdivision does not result in a development that will not be inconsistent with the existing subdivision pattern within the immediate locality. The pattern within this portion of the R2: Low Density Residential Zone contains a mixture of allotment types all of which vary in size and dimensions. The character is not defined by any one particular allotment size and type and the variability to the subdivision pattern gives emphasis to the typology of dwellings which vary in size and scale within the local context. The newly created allotments will not be out of character with the subdivision configuration along Lewis Street or the surrounding street network and will maintain the established character of the low density neighbourhood.
- The proposed land subdivision will ensure that the new lots being created are suitably sized and dimensioned and capable of accommodating a dwelling house that will fully comply with the building envelope provisions of the relevant statutory planning requirements. Concept plans prepared by Mackenzie Pronk Architects demonstrates that the new dwelling will fully comply with the floor space ratio and height of building requirements within the Manly Local Environmental Plan 2013. In addition to this, the dwelling will also be fully compliant with the external wall heights; number of storeys; setbacks; landscaped area; open space; total open space and private open space requirements of the Manly Development Control Plan 2013.
- The new dwellings will not contribute to any adverse environmental amenity impacts to the neighbouring dwellings. The concept plans demonstrate that the new dwellings will not result in any adverse overshadowing impacts to the private living areas of the southern neighbour and will maintain the required hours of direct solar access to the principal outdoor recreation spaces of the neighbouring dwellings. Visual privacy has been largely mitigated with the provision of highlight windows at the first floor level and the deck area are west-facing and will overlook the subject sites rear yard. No views from the neighbouring properties or the public domain will be obscured by the dwelling and subsequently the development will comply with the Councils controls.
- The proposed land subdivision will not be visible from the existing streetscape setting. The newly created allotments as a result of the subdivision is significantly setback from the front property boundary of Lewis Street and will be perceived from the street. The driveway access handle will remain the only visible element and it is likely that the existing dwelling house at no. 9 Lewis Street will screen any newly created dwelling on each respective allotment on the street.
- Council has provided there support in principal to a Clause 4.6: Exceptions to Development Standards as part of the prelodgement comments received by the Northern Beaches Council on the 23 August 2017.

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

The variation to the minimum subdivision lot size requirements is acceptable and there are appropriate planning grounds in support of the non-compliance. The proposed Torrens title subdivision will not alter the appearance of the existing streetscape along Lewis Street

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given the works relate to the rear portion of an existing battle-axe allotment and the newly created allotments are substantially setback from the front property boundary. The lots are also appropriately sized and dimensioned to accommodate a dwelling house on each respective lot that will fully comply with the building envelope provisions of the relevant statutory planning requirements."

- (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: The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

- (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: For reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density residential zone in the MLEP 2013.

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

Comment: Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. However, the development contravenes the development standard by greater than 10% and as such concurrence may not be assumed by a delegate of Council but in this case a local planning panel.

Part 5 Miscellaneous Provisions

Not applicable.

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	Comment
6.1	Acid Sulphate Soils	Yes	Yes	The subject site is located in Class 5 on the Manly Acid sulphate map. The proposal complies with this clause.
6.4	Stormwater Management	Yes	Yes	The proposal complies with the clause, subject to conditions imposed by Council's development engineer.

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	✓	
Heritage – In Vicinity	✓	
Landscaping Design	✓	
Landscape/Tree Preservation	✓	
Sunlight Access and Overshadowing	✓	
Privacy and Security	✓	
Maintenance of Views	✓	

Part 4 - Development Controls

Site Area: 1244m ²	Permitted/ Required	Proposed	Complies Yes/No
Residential Density – Area D5	500m ² of site area per dwelling	Lot 2- 500.1m ² Lot 1- 430.2m ²	Yes No, see comments below as well as comments under Clause 4.6.
Subdivision -Access and services -Prevailing subdivision pattern and natural features -Energy efficiency	Assess and services acceptable Complements existing pattern Maximise solar access	See comments below. The proposal has included a plan showing possible future redevelopment on site. IT identified that a dwelling may be successfully accommodated on each of the two allotments.	Yes

4.1.1.2 Residential Land Subdivision

Clause 4.1.1.2 of the Manly DCP outlines control for residential land subdivision. An assessment of the controls is outlined below:

- b) *The future development of new lots is to be considered in DAs for subdivision. A subdivision involving a new lot for residential development less than 500sqm must identify on the subdivision plan that a dwelling can be successfully accommodated on each allotment, in compliance with this Plan. Concept plans of likely future redevelopment may be required in this regard.*

The proposal has included a plan showing possible future redevelopment on site. It identified that a dwelling may be successfully accommodated on each of the two allotments with no unreasonable amenity impacts.

- c) *Vehicular access and services must be considered and comply with the following minimum requirements:*
- i) *Each lot must have frontage to a public road being at least 1m wide, with the land held as fee simple irrespective of whether this frontage serves as part of a right of way for access or not;*
 - ii) *Battle-axe allotments must provide a 3.5m wide vehicular access handle to a public road or place in either fee simple, or by right(s)-of-way or in combination;*
 - iii) *Driveways longer than 30m require provision of a passing bay (as shown in Figure 25 - Battleaxe Allotments) or otherwise provide an increased width demonstrating appropriate access, manoeuvrability and safety.*

The proposed frontage to Lewis Street is 4.87m, allowing for 1m for each lot to be held as fee simple and the minimum 3.5m wide vehicular access. The drawings lodged as part of this application ensure that a passing bay is located on the site given the driveway is longer than 30m.

- d) *The provision of drainage, easements and servicing requirements must be considered and any resultant adverse impacts- environmental or otherwise are to be minimised or resolved in the design. In particular sufficient details of stormwater management are to accompany the subdivision.*

Council's development engineer has included a condition as part of this recommendation for easement of drainage to be created prior to the issue of any subdivision certificate

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		✓

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 Environment Plan 2013 and the Manly Development Control Plan 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 impacts 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 2.3 of Council's Development Control Plan 2013 with one (1) submission received from the following objectors raising the following concerns:

Submission and Address	Main Issues raised in the submission	Comments on submission
1. Neville And Ella Pulver (28 Beatrice Street, Clontarf)	<ul style="list-style-type: none"> Proposed lot size does not comply with Clause 4.1 of Manly LEP Minimum subdivision lot size. Density of housing is out of character of the local area and neighbourhood. Potential loss of privacy and amenity from future development. Stormwater drainage will require the removal of a number of trees and vegetation along the southern boundary (28 Beatrice Street, Clontarf). 	<ul style="list-style-type: none"> See Comments under Clause 4.6 in this report. Indicative dwelling footprints show that low density residential development can be provided on site. Any future applications will be assessed on merit in regards to privacy. No trees are proposed to be remove as part of these application.

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

The public interest is best served by the consistent application of the relevant environmental planning instruments and by the consent authority ensuring that any adverse impacts on the surrounding area are avoided. This is considered to have been achieved in this instance subject to the recommended conditions of consent.

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 includes an addition of one (1) lot on site. Accordingly a contribution of 1 x \$20,000 = \$20,000 is payable. A suitable condition has been included in the recommendation.

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

That Development Application No. 260/2017 for demolition works and two lot Torrens title subdivision at 9a Lewis Street, Balgowlah Heights 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. 260/2017:

Plan No. / Title	Issue/ Revision & Date	Prepared By
Demolition Plan	28 September 2017	Byrne and Associates
Sheet 1 of 2/ Plan No. A1- 10909P	Issue A/ 23 September 2017	Byrne and Associates
Sheet 2 of 2/ Plan No. A1- 10909P	Issue A/ 23 September 2017	Byrne and Associates
Sheet 3 of 13/ Pavement Plan	Issue A/ October 2017	Thomas Lau

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,

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- (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)

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

ANS01

An Erosion and Sediment Management Plan which provides adequate measures for erosion and sediment control, must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier. The Erosion and Sediment Management Plan shall comply with the requirements for Erosion and Sediment Management plans contained with Clause 2.1.11 of the Manly Development Control Plan, 2013 and Manly Council's Guidelines for Sediment and Erosion Controls on Building Sites, 2005.

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

ANS02

Engineering plans are to be submitted to the Certifying Authority for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of inter-allotment stormwater line over No. 9A Lewis Street, No.26 Beatrice Street and No. 28 Beatrice street and driveway (3.0m wide) on No.9A Lewis Street with a passing bay (minimum 10.0m long and 5.0m wide) which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and related Australia Standard.

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

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

ANS03

An application for street levels shall be made with Council subject to the payment of fee applicable at the time of payment. The fee includes all Council inspections relating to the driveway construction and must be paid.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

1A (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.

2 (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.

3 (2US01)

A Section 94 contribution is to be paid for the provision of or increase the demand for public amenities and public services as a consequence of the development in the area. The total contribution for this development of 9a Lewis Street, Balgowlah Heights is 20,000.00, being \$20,000.00 per additional dwelling. This contribution shall be paid to Council prior to the release of the Construction Certificate.

Reason: To enable the provision of public amenities and services required/anticipated as a consequence of increased demand resulting from the development.

CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT

ANS04

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$10 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

4 (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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

ANS05

The provision of a vehicle crossing 3.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property. (DACENE05)

ANS06

All civil works approved in the Construction Certificate are to be supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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

ANS07

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety.

5 (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.

6 (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.

7 (4CD03)

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

Reason: To maintain sanitary conditions on building sites.

8 (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.

9 (4CD10)

Noise arising from the works must be controlled in accordance with the requirements of the Protection of the Environment Operations Act 1997 and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

Reason: To ensure compliance with legislation and to prevent disturbance to the surrounding community.

10 (4CD11)

The activity of rock-breaking associated with the development of the site, must only occur between the hours of:

- 9.00 AM – 5.00 PM on weekdays (Monday – Friday) only.

Rock-breaking activities must not occur on weekends or public holidays.

Adjoining properties must be notified in writing of the times and days in which rock-breaking activities will be carried out. Notices must be distributed at least seven (7) days before the activity is to occur.

Reason: To protect the acoustic amenity of neighbouring properties and the public.

11 (4NL01)

Noise arising from demolition and construction works must be controlled in accordance with the requirements of the Protection of the Environment Operations Act 1997 and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

Reason: To prevent disturbance to the surrounding community during construction.

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

ANS08

The applicant is to ensure all services including, water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

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

ANS09

A reciprocal right of carriageway minimum 3.5 m wide (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision and accompanying 88B instrument to include all vehicular access and manoeuvring areas. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

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

ANS10

All utilities/services and street lighting is to be installed by the applicant/developer. Certification is to be provided to Council stating the above requirement has been complied with. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Public safety and to ensure services have been provided for the newly created lots.

ANS10

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of Sydney Water's web site

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

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

ANS11

The provision of all utilities/services and/or street lighting are to be certified by the relevant authority(s) and/or authorised contractor. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure services have been provided in accordance with the relevant authorities requirements.

ANS12

An easement for drainage (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision the accompanying 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s). Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

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

ANS13

An easement for services (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision and the accompanying 88B instrument to ensure all utility services are located within the appropriate easement(s). Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

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

ANS14

A declaration by a registered surveyor shall be provided to Council as evidence that all construction such driveway and inter-allotment drainage lines have been effected within the appropriate property, easement boundaries and rights of carriageway. This shall be in the form of a copy of the final subdivision or easement plan, with the distances from the boundaries to the edges of these structures endorsed in red thereon and signed by the surveyor.

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

Reason: To ensure accurate location of buildings, access and services

ANS15

To enable the lodgement of the final plan at the NSW Land and Property Information Department the Subdivision Certificate shall not be issued until all structures are demolished and site stabilised and reinstated.

Reason: To ensure that the plans relate to approved development, (DACENH23)

ANS16

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. Nine copies of the final plan of subdivision are to be submitted. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

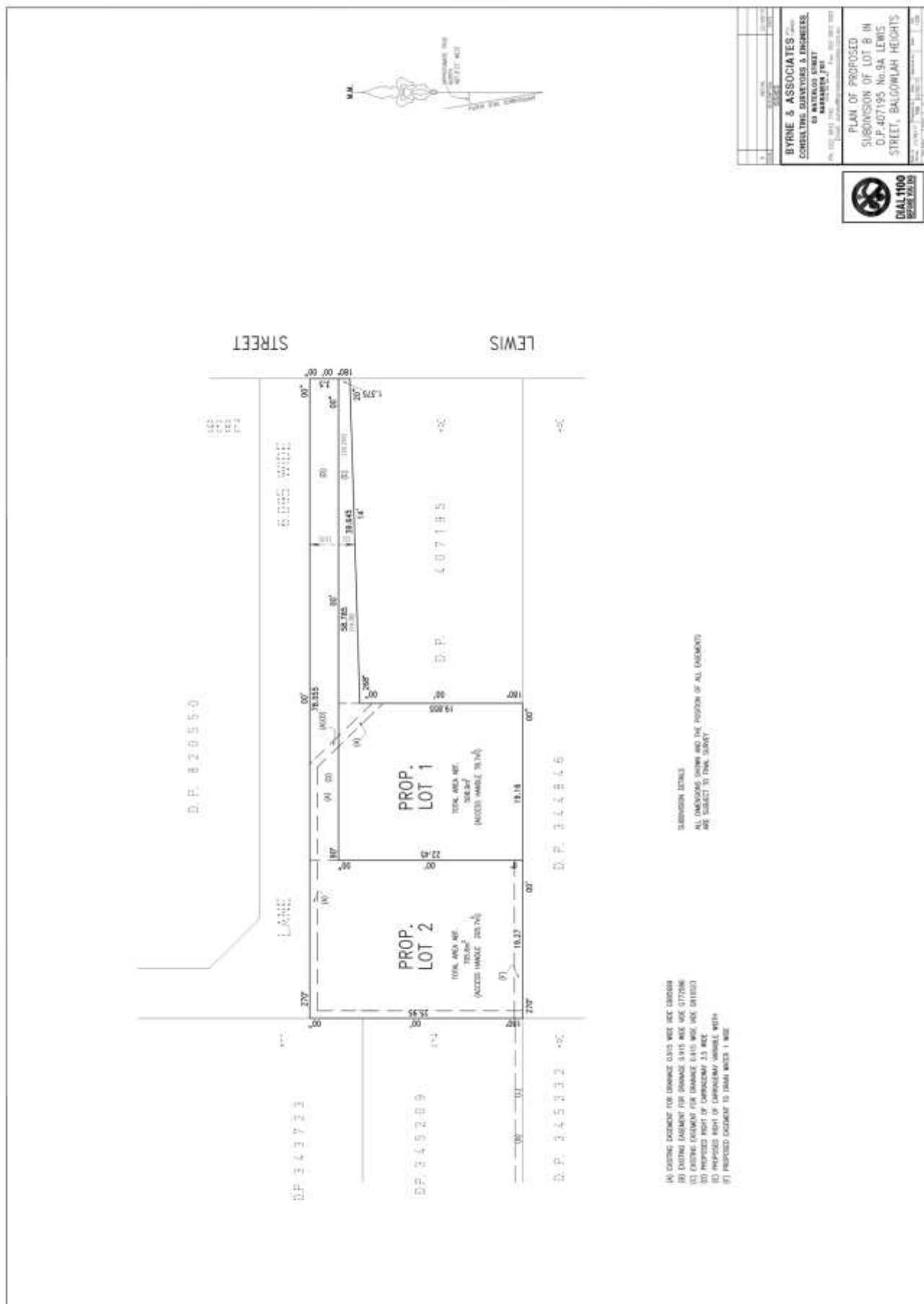
Reason: Statutory requirement of the Conveyancing Act 1919.

ANS17

All easements, rights of carriageway, positive covenants and restrictions as to user as indicated on the plans and required by this consent are to be created on the title naming Northern Beaches Council as the sole authority empowered to release or modify. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure proper management of land.





ITEM 3.5 **DA2017/1136 - 209 - 211 OCEAN STREET NARRABEEN -
ALTERATIONS AND ADDITIONS TO A SHOP TOP HOUSING
DEVELOPMENT**

REPORTING OFFICER **ADAM MITCHELL**

TRIM FILE REF **2018/167631**

ATTACHMENTS 1 [↓](#) **Assessment Report**
 2 [↓](#) **Site Plan & Elevations**

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2017/1136 for Alterations and Additions to a shop top housing development at Lot CP SP 89359, 209 - 211 Ocean Street, Narrabeen for the reasons outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2017/1136
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Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot CP SP 89359, 209 - 211 Ocean Street NARRABEEN NSW 2101
Proposed Development:	Alterations and Additions to a shop top housing development
Zoning:	Warringah LEP2011 - Land zoned B1 Neighbourhood Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Development Assessment Panel – Central
Land and Environment Court Action:	No
Owner:	The Owners Strata Plan 89359
Applicant:	Robert Chedid

Application lodged:	22/11/2017
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	01/12/2017 to 11/01/2018
Advertised:	02/12/2017
Submissions Received:	1
Recommendation:	Approval

Estimated Cost of Works:	\$ 595,000.00
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ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant

- Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
 - A review and consideration of all documentation provided with the application (up to the time of determination);
 - A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

Warringah Development Control Plan - D7 Views

Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot CP SP 89359 , 209 - 211 Ocean Street NARRABEEN NSW 2101
Detailed Site Description:	<p>209 - 211 Ocean Street, Narrabeen (the subject site) is a shop top housing development located on land zoned for B1 Neighbourhood Centre purposes pursuant to the Warringah Local Environmental Plan 2011.</p> <p>The site is a corner allotment bound by Ocean Street to the west, Malcolm Street to the north and a Council carpark (zoned for RE1 Public Recreation) to the east. Further east of the site is North Narrabeen Beach. South of the site are two other shop-top housing developments (203 and 205-207 Ocean Street) which have shared walls with the subject development site.</p> <p>The site is generally rectangular in shape with a 3m step on the eastern edge, a frontage of 36m to Malcolm Street, a 22.2m frontage to Ocean Street and an overall surveyed area of 795m².</p> <p>Presently the allotment accommodates a part two / part three storey shop top housing development comprising of three food and drink premises on the ground floor and seven apartments on the two floors above. The site has a basement level for the purpose of car parking.</p> <p>The entirety of the site has been built upon and therefore there are no noteworthy topographical or landscape features of the site.</p>

Map:



SITE HISTORY

Development Application No. 2002/617

Application for the construction of a mixed retail/residential flat building and associated car parking.
Determined by way of approval on 15 January 2003.

Pre-Lodgement Meeting No. 2017/0010 (PLM)

On 23 March 2017 the applicant met with Council to discuss a proposal for the addition of a new apartment atop of the existing building and to construct a roof structure over the existing roof terrace area.

The non-verbatim meeting minutes of the PLM discuss a raft of built form issues including building height and setbacks - generally concluding that the roof height of the building is acceptable, roof height of the terrace is unacceptable and that the setbacks of the proposed third floor be increased to reduce visual bulk.

The current development application before Council is reflective of this PLM meeting and has refined the design further. Whilst not all the matters raised were addressed to the magnitude suggested, substantial changes to the overall design were made - including the deletion of the roof terrace.

Development Application No. 2017/1136 (subject application)

Council received the subject development application on 22 November 2017. Following a preliminary assessment of the application, Council wrote to the applicant on 24 January 2018 advising that the application, in its current form, cannot be supported given the excessively bulky visual appearance when viewed from the streetscape, the nil setback to the northern boundary and the overall scale of the proposed eave overhang.

Council met with the applicant, architect and planner on 31 January 2018 to discuss the contents of the letter and a way forward. In this meeting Council made a number of recommendations to resolve the above issues and additionally noted concern about the placement of air conditioning units.

The applicant satisfactorily responded the Council's recommendations and, via some draft plans, resubmitted a new set of architectural drawings on 19 February 2018.

In accordance with Part A.7 of the Warringah Development Control Plan 2011 the application was not re-notified as it is of a lesser environmental impact than originally proposed.

Herein this report will reference these amended plans.

PROPOSED DEVELOPMENT IN DETAIL

The development application is for alterations and additions to an existing part two / part three storey shop-top housing building for the purposes of constructing an additional unit above the two storey western portion of the building.

The unit proposed is approximately 140m² in area and comprises of three bedrooms and two and half bathrooms. The unit has a balcony along the northern and western edges and is setback from the outer edge of the floors below. The unit achieves a roof height of RL19.903 which is lesser than the existing lift overrun (RL20.580).

In addition to the construction of a new unit the works will require the relocation of the existing air conditioning units, which are proposed to be located atop of the roof of the new unit. The air conditioning units (and associated louvre screening) achieves a height of RL21.160 which is greater than the existing lift overrun.

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:

Section 79C 'Matters for Consideration'	Comments
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.
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)	<p>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.</p> <p>Clauses 54 and 109 of the EP&A Regulation 2000, Council</p>

Section 79C 'Matters for Consideration'	Comments
	<p>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.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> 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.</p>
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	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Public Exhibition" in this report.
Section 79C (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

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 the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mrs Christina Slump	1 / 209 - 211 Ocean Street NARRABEEN NSW 2101

During the public notification period of the application one submission was received which read:
I'm opposed to application as I live in the building and work from home. The noise of the construction will have negative impact on my work and daily life. We moved 6 months ago from Evans Street, Freshwater for this very reason - noise pollution from the construction site of Harbord Diggers, now we will have to be subjected to building work noise once again.

Comment

This matter is adequately resolved via condition of consent which restricts the construction hours. Additionally it is not foreseen that the construction works proposed that would be of a magnitude comparable to the Harbord Diggers redevelopment, particularly given that no excavation works are proposed.

Exposure to construction works within a dense residential area must be an expectation within the Northern Beaches LGA and accordingly warrants the conditions included in the recommendations of this report.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<i>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</i> <i><u>Note:</u> The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</i>
Environmental Health (Acid Sulphate)	<i>The proposed development is not likely to disturb the Acid Sulphate soil or the associated watertable, therefore there are no objections from Environmental Health.</i>
NECC (Coast and Catchments)	<i>No objection to the proposed development as it is not impacted by coastal process and will not impact public access to or use use of the beach.</i>

Internal Referral Body	Comments
NECC (Development Engineering)	<i>No development engineering objection is raised to the proposed development.</i>
Parks, reserves, beaches, foreshore	<i>No objections to the proposed development and no conditions recommended.</i>
Strategic & Place Planning (Heritage Officer)	<p><i>This application is for alterations and additions to an existing mixed use building, to create an additional three bedroom unit. This building is approximately 70 metres from the heritage listed stone wall and on the opposite side of Ocean Street. As a result this application will have no impact upon the heritage item in the vicinity.</i></p> <p><i>Therefore, no objections are raised on heritage grounds and no conditions required.</i></p>
Strategic & Place Planning (Urban Design)	<p><i>The proposed area for screening of air-conditioning (a/c) units on the new roof area will increase the overall height of the building and increase the breach in building height control of 8.5 metres even more. This is not acceptable and the a/c unit location area will have to be relocated to the existing roof level (RL16.740) and appropriately screened.</i></p> <p><u>Planner note</u> The Urban Designer has recommended that the above matter be subject to a Deferred Commencement Condition, however Planning considers that the matter can be adequately resolved via Prior to Construction Certificate conditions.</p>
Traffic Engineer	<p><i>The proposal is for alterations and additions to an existing shop top housing development and construction of one 3 bedroom apartment.</i></p> <p><i>The total parking spaces required for the entire site including the proposed additional apartment is 30 spaces which is available in the existing car parking.</i></p> <p><i>There are 4 sets of tandem parking spaces provided in the car parking, this is acceptable subject to allocation of each set of tandem parking spaces to the same unit.</i></p> <p><i>The traffic generating from the proposal is not considered significant and will not have adverse impact on the road network.</i></p> <p><i>Therefore, no objection is raised on the proposal on traffic grounds subject to the following conditions.</i></p>
Waste Officer	<p><u>Planner note</u> The Waste Officer has recommended the removal of the existing door of the bin room as it is <i>not needed</i>. The removal of this door is not</p>

Internal Referral Body	Comments
	considered to be within the scope of this application and is therefore not included as a condition of consent in the recommendation of this report.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<i>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</i>

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)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP 65 - Design Quality of Residential Apartment Development

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

- (1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:
- (a) the development consists of any of the following:
 - (i) the erection of a new building,
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
 - (iii) the conversion of an existing building, and
 - (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car

parking), and

(c) the building concerned contains at least 4 or more dwellings.

Council's assessment finds that the addition of a second floor atop of a portion of the existing building and the addition of a new apartment warrants the development to be a *substantial redevelopment* as per Cl.4 (1) (ii) and accordingly, the provisions of SEPP 65 are applicable to the assessment of this application.

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

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

Northern Beaches Council does not have an appointed Design Review Panel.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

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

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

Comment:

The site is situated in an irregular context given the subject zoning of the site and the different zoning of other sites within the immediate vicinity (including R2 Low Density Residential, R3 Medium Density Residential and RE1 Public Recreation). Additionally, the site borders a carpark to the north and east, a road to the west and a similar scale shop top housing development to the south.

However irregular the zoning layout is of the immediate area, the proposed second floor addition will contextually respond to the scale of the existing building on site and the pre-existing prevailing heights of developments south and on the opposite side of Ocean Street (as they are subject to a greater maximum building height). Additionally, the architecture of the proposal is consistent with the existing building on site

and will contribute to enhance the visual aesthetic of the building when viewed from surrounding sites and when viewed driving south-bound on Ocean Street which is considered to be the most predominant aspect of the building.

Given that the proposed addition does not result in any reduction of landscaping, is lesser than the existing maximum height of the building and results in negligible amenity impacts upon other surrounding properties, it is considered that the proposal satisfies Principle 1 on context and neighbourhood character.

Principle 2: Built Form and Scale

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

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

Comment:

The proposed development has an architecture that is sympathetic to the pre-existing building on site and to the sensitive coastal environment of which the site is situated. The proposal has adopted traditional design features of a podium form where the proposed storey is setback between 2.0m and 3.5m from the outer edge of the levels below and has an integrated wide-brimmed eave/awning to visually compress the building. Additionally, the facades facing out onto Ocean Street and Malcolm Street are predominantly finished with floor-to-ceiling operable glazing that further reduces the perceived bulk of the building juxtaposed to a solid mass.

The development also proposes a wrap-around balcony fronting Ocean Street and Malcolm Street. The glazed balustrade for the balcony is setback approximately 900mm from the outer edge of the floor below. This simple architectural technique reduces the overall perceived height of the development as nothing abuts the levels below, and contributes to the visual manipulation of the second floor having a greater setback than it really does.

Overall, it is thought that the proposal has a well-considered architecture that is both responsive to the streetscape and the existing building on site and is therefore considered to satisfy Principle 2 on built form and scale.

Principle 3: Density

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

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

Comment:

The development is for the addition of one unit only comprising of three bedrooms. The proposed unit is large in terms of floor area and provides a full wrap-around balcony that ensures that there is adequate indoor and outdoor recreational space for occupants of the development. Additionally it is worth noting the

beach-front location of the site which provides a much greater level of outdoor recreational space. Therefore, the occupants of the development will not be impacted by an unreasonable density and the proposed addition is consistent with the existing density of the site.

Principle 4: Sustainability

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

Comment:

The proposed development has an orientation that ensures it receives an abundance of natural light and cross-ventilation in accordance with the requirements of the ADG. The concrete roof and awning design of the proposal provides an appropriate level of passive thermal mass where it will obstruct the high sun from directly entering the apartment in the summer months, but will allow for the floor slab of the apartment to benefit from thermal massing in the winter months.

Principle 5: Landscape

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

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

Comment:

The development is for the addition of a second storey atop of an existing two storey building and thereby has no impact or changes to any provision of landscaped open space.

Principle 6: Amenity

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

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

Comment:

The proposed development provides a second storey 'penthouse' apartment that is large in scale, achieves natural sunlight and ventilation throughout the day and has a positive outlook across the streetscape and the

adjoining public lands. The design provides an acceptable amenity for occupants without impacting on the amenity of other surrounding sites and is therefore considered to be satisfactory in terms of Principle 6.

Principle 7: Safety

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

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

Comment:

The development utilises the existing security systems in place at the existing development which are considered to be satisfactory. The orientation of the apartment and the wrap-around balcony provide for additional opportunities for passive surveillance of the vast surrounding public open spaces and car parks which enhances the general safety of the area.

Principle 8: Housing Diversity and Social Interaction

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

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

Comment:

It is likely that the proposed second storey 'penthouse' apartment would be fitted with the specifications required for a multi-million dollar apartment, thereby providing a level of diversity from some other surrounding residential flat buildings and shop top housing developments. The development does not directly impinge on any social interactions (being an addition to an existing shop-top housing development), but creates a better connection between the building and the surrounding public open spaces through the large wrap-around balcony.

Principle 9: Aesthetics

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

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

Comment:

The proposed development will enhance the aesthetic of the overall development when viewed from the surrounding public open spaces and the adjoining and nearby developments. The architecture of the proposal is consistent with the existing built form and maintains the predominant curved corner at the north-

western vertex of the site which will make the building appear as though it had all been constructed at the same time. Additionally, the palette of materials selected is the same as the pre-existing building which already responds positively to the streetscape and surrounding areas.

Overall, the development is considered to be well designed and responsive to the existing scale of development on site, surrounding developments and the surrounding coastal environment. The development is considered to satisfy Principle 9.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Consistent The development is assessed as satisfactorily responding to its context in accordance with the 9 Principles of SEPP 65 as above.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Consistent The development is orientated in such a manner which provides an adequate provision of visual outlook, solar access and ventilation whilst enhancing the streetscape aesthetic from Malcolm Street and Ocean Street.
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	Consistent Whilst the proposed development is located at the second storey of the pre-existing development (thereby not having any direct impact on the immediate street interface), the openness of the proposed apartment (wrap around balcony) will create a

		visual connection between private and public space and will increase opportunities for passive surveillance of the surrounding land.												
Communal and Public Open Space	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter) 	<p>Not Applicable</p> <p>The development is for the addition of one apartment only and proposes no modification to the existing provision of communal open space.</p>												
Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	<p>Not Applicable</p> <p>The application proposes no amendment to the existing provision of deep soil zones.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+)</td><td>12m</td><td>6m</td></tr> </tbody> </table>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+)	12m	6m	<p>Consistent</p> <p>The site only shares one boundary with an adjoining development.</p> <p>North of the site is Malcolm Street, a public car park, a public park and the North Narrabeen Surf Life Saving Club some 100m away.</p> <p>West of the site and across</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+)	12m	6m												

	<div>storeys)</div> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	<p>Ocean Street is No.214 Ocean Street which has a spatial separation of approximately 30m from the subject development. Thereby the development satisfies this requirement.</p>
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>Not Applicable</p> <p>No changes are proposed to the existing building entry and therefore this requirement is not for consideration.</p>
Vehicle Access	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p>Not Applicable</p> <p>No amendment to the existing vehicle access is proposed.</p>
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p>Consistent</p> <p>The development provides a sufficient provision of carparking for the apartment in accordance with Appendix H of the Warringah Development Control Plan 2011.</p>
Part 4 Designing the Building		
Amenity		

Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none">• Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.• A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter	<p>Consistent</p> <p>The proposed apartment achieves an adequate provision of access to sunlight without detrimentally impacting upon the existing provision of access to sunlight enjoyed by surrounding buildings.</p>										
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none">• At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.• Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	<p>Consistent</p> <p>The apartment is openable on the entire northern and western facade which provides a sufficient provision of natural cross ventilation in accordance with the requirements of the control.</p>										
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	<p>Consistent</p> <p>The entire apartment attains a floor to ceiling height of 2700mm which satisfies the requirement of the control.</p>
Minimum ceiling height												
Habitable rooms	2.7m											
Non-habitable	2.4m											
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area											
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	<table><tr><td>If located in mixed used areas</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr></table>	If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area									
If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area											
Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p> <p>Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none">3.6m for studio and 1 bedroom apartments4m for 2 and 3 bedroom apartments <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>Consistent</p> <p>The three bedroom, 2.5 bathroom penthouse apartment is required to have a minimum internal area of 95m².</p> <p>The proposed internal area is approximately 142m² and therefore satisfies the requirement of the control.</p>
Apartment type	Minimum internal area											
Studio	35m ²											
1 bedroom	50m ²											
2 bedroom	70m ²											
3 bedroom	90m ²											

Private Open Space and Balconies	<p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	<p>Consistent</p> <p>The apartment has a 2.4m wide west facing balcony that measures approximately 45m². An additional narrow balcony measuring approximately 9m² is north of the apartment.</p>
Dwelling Type	Minimum Area	Minimum Depth															
Studio apartments	4m ²	-															
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
Common Circulation and Spaces	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<p>Consistent</p> <p>The proposed apartment will be the single residence accessible from this level.</p>															
Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	<p>Consistent</p> <p>The proposed apartment has a sufficient provision of storage space within the apartment to satisfy this requirement.</p>					
Dwelling Type	Storage size volume																
Studio apartments	4m ²																
1 bedroom apartments	6m ²																
2 bedroom apartments	8m ²																
3+ bedroom apartments	10m ²																
Acoustic Privacy	<p>Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.</p>	<p>Consistent</p> <p>The proposed apartment is located further than 3.0m from any service infrastructure that could acoustically impact on the occupants of the development.</p> <p>The apartment adjoins the existing communal roof terrace to the east, and the</p>															

		bedrooms are situated on the opposite side of the apartment to maximise their amenity by virtue of acoustic privacy and solar access.
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent The design and layout of the apartment is considered to be satisfactory in accordance with the surrounding potential noise pollution.
Configuration		
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Consistent The proposed scale of the one proposed apartment is considered to be appropriate for the context of the site and will support the housing needs, choice and availability for the community.
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Consistent The proposed second storey facade is consistent with the pre-existing architecture on the site which is respectful of the character of the area. The recessed second floor contributes to reducing any perceivable visual bulk of the facade and is appropriate within the context of the site.
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Test whether the roof space can be maximised for residential accommodation and open space.	Consistent The proposed roof level of the development is assessed as being satisfactory in accordance with Clause 4.3 and 4.6 of the WLEP 2011.

		However, as noted elsewhere in this report, the addition of air conditioning units atop of the roof is not supported given the potential visual impact from surrounding sites (both present and in future) and given the level of non-compliance that would result in such a development. This matter has been adequately addressed via conditions of consent in the recommendations of this report.																														
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Not Applicable No amendment to the existing landscape provision is proposed.																														
Planting on Structures	<p>When planting on structures the following are recommended as minimum standards for a range of plant sizes:</p> <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m³</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m³</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td></td><td></td><td></td><td></td><td></td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm							Not Consistent The development does not propose any modification to the existing provision of planting on structures. Given the harsh coastal environment and prevailing winds that the building is exposed to, it is considered unreasonable and impractical to require planter boxes on the building.
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																												
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent																												
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	<table><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>	Ground Cover			300-450mm		Turf			200mm		
Ground Cover			300-450mm									
Turf			200mm									
Universal Design	Developments are to achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.	Consistent The proposed apartment achieves greater than silver level universal design features in accordance with the Livable Housing Guidelines.										
Adaptive Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	Not Applicable The development does not propose to reuse or re-purpose any elements of the existing building and thereby, does not warrant adaptive reuse to be an applicable criterion in the assessment of this application.										
Mixed Use	<p>Can the development be accessed through public transport and does it positively contribute to the public domain?</p> <p>Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.</p>	Not Applicable The development is solely for the purpose of residential accommodation and therefore, does not warrant mixed use to be an applicable criterion in the assessment of this application.										
Awnings and Signage	<p>Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.</p> <p>Signage must respond to the existing streetscape character and context.</p>	Not Applicable This development application proposes no amendment to the existing (and approved) awning over the public footpath servicing the site. No signage is sought in this development consent.										
Performance												
Energy Efficiency	Have the requirements in the BASIX certificate been	Consistent										

	shown in the submitted plans?	The applicable is buttressed by a BASIX and NatHERS Certificate which are endorsed by the recommendations of this report.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Consistent The development seeks to utilise the existing stormwater system available on site which has been assessed as satisfactory by Council's Development Engineers.
Waste Management	Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.	Consistent The provision of waste management proposed under this application is satisfactory when tested against the relevant Council policies.
Building Maintenance	Incorporates a design and material selection that ensures the longevity and sustainability of the building.	Consistent The architecture of the building has selected materials that are consistent with the existing architecture and that will remain durable in longevity.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

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

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

(c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

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

Comment:

None of the standards specified in Clause 30 (1) of SEPP 65 are being used as grounds for refusal of this development application.

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

- (a) the design quality principles, and
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

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

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

Comment:

The application has given appropriate regard to the design quality principles of SEPP 65 and the objectives and requirements specified in the Apartment Design Guide. This is self-evident in the architectural plans and in the documentation buttressing the application.

SEPP 71 - Coastal Protection

Council's Coastal Officer has reviewed the development application and raises no objections to the proposal as the works will have no impact on any coastal processes, give rise to coastal hazards and will not obstruct public access to the beach.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 856456S dated 15 November 2017). The BASIX Certificate is supported by a NatHERS Certificate (see Certificate No. ASDIXK7DHR dated 26 October 2017).

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

Commitment	Required Target	Proposed
Water	40	40

Thermal Comfort	Pass	Pass
Energy	50	51

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

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Building: 10.153m (RL19.903) A/C Units: 11.41m (RL21.160)	19.4% 34.2%	No No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.5 Development within the coastal zone	Yes
6.1 Acid sulfate soils	Yes

Clause	Compliance with Requirements
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

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

Requirement:	8.5m
Proposed:	Building: 10.15m (RL19.903) A/C Units: 11.41 (RL21.160)
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	Building: 19.4% A/C Units: 34.2%

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 WLEP 2011. 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 WLEP 2011 is a development standard.

What are the underlying objectives of the development standard?

(1) The objectives of Clause 4.3 are as follows:

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

Comment: The entirety of the proposed second floor addition breaches the building height standard by 1.65m or 19.4%. In the context of the site, this breach is considered to be acceptable for the following reasons:

- The proposed height is lesser than the existing highest element of the proposal (being the liftshaft overrun at 10.82m (RL20.580);
- The proposed roof height is similar in height to the predominant roof level and the wall surrounding it at 10.51m (~RL19.540);

- The adjoining shop top housing development to the south (No. 207 Ocean Street) achieves a maximum roof height of RL19.970 which is negligible in difference to the proposed development;
- Across Ocean Street are a series of residential flat buildings on land zoned for R3 Medium Density Residential development. These sites are subject to an 11m Height of Buildings control. Therefore the existing buildings on these sites, and the reasonable redevelopment potential of these sites would achieve a building height greater than what is being proposed;
- The context of the site being bound by public space on three sides means that the development won't be visually perceived as incompatible with the height of surrounding buildings and will not present as an anomaly in the skyline.

However, the proposed air conditioning units and louvre screen exceed the maximum building height by 34.2%, and also exceed the maximum height permitted in the adjoining R3 zone. Therefore, given the quantum of non-compliance and the exceedence of height of other surrounding buildings, it cannot be said that the air conditioning units and louvre screen are compatible with the height of surrounding and nearby development.

Accordingly, the recommendations of this report require the air conditioning units to be relocated to a portion of the roof where they will be of a lesser height.

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

Comment: The proposed second floor addition has been designed to fit into the existing stepping of the architecture which has a western roof level approximately 2m lower than the eastern roof level, thereby essentially squaring off the building. As detailed throughout this report, particularly in the SEPP 65 component, the development does not result in any adverse visual impact, disruption of views, loss of privacy and loss of solar access. Overall it is assessed that the development has a negligible amenity impact on adjoining lands.

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

Comment: The architecture of the proposed development is sympathetic to the coastal environment that the site is located. The palette of materials selected and the predominant finish of transparent glazing offer a softened facade that is consistent with the existing architecture on the site and exists in harmony with the vast surrounding public open spaces.

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

Comment: The proposed development is considered to have an acceptable visual impact when viewed from the vast surrounding public open spaces including the park, beach, SLSC and roads network. The architecture of the proposal is an enhancement to the existing building and is considered to upgrade the street frontage.

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 B1 Neighbourhood Centre zone.

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*

Comment: The proposed development does not impact on the existing provision of small scale retail businesses which are within the immediate vicinity of the site.

- *To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.*

Comment: The proposed development will not impact on the existing atmosphere of the neighbourhood centre, given the quality of the architecture and the consistency with surrounding developments and building heights.

- *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: It is not anticipated that the proposed development will give rise to any land use conflict nor unreasonably impact on the existing provision of amenity enjoyed by adjoining or nearby residents.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the WLEP 2011?

(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: The proposed development relies on the flexibility of Clause 4.3 pursuant to Clause 4.6 to allow for variation to development standards where deemed reasonable. In this circumstance, flexibility to the 8.5m Height of Building development standard is sought to the quantum of 1.65m or 19.4%. As noted above, the air conditioning units are not supported in their current location.

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

Comment: Allowing flexibility in this circumstance will provide for an improved visual aesthetic of the building when viewed from adjoining properties, the street and the public domain - noting the prominent location of the building. Additionally the development will create additional housing in the neighbourhood without giving rise to any unreasonable or adverse amenity impacts upon adjoining land. The flexibility sought is also comparable to the adjoining developments westward of Ocean Street that are permitted a Height of Buildings greater than what is being sought by this development application.

Thereby, it is reasonable to consider allowing flexibility and variation to the development standard in

this circumstance for the increase in building height. It is not however considered warranted to allow additional flexibility for the air conditioning units which further exacerbate the quantum of non-compliance, particularly as there are alternate locations on the roof the development that can accommodate the units at a lesser height. This matter has been conditioned accordingly.

(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: There are several factors which must be noted in the particular circumstances of this application in order to establish that there are reasonable planning grounds to contravene the development standard:

- The building height is being increased for a portion of the development, however it does not exceed the existing maximum height of buildings on the site (being the lift overrun);
- The building height is comparable to the existing discrepancies between the two roof terrace levels and will not be visually obstructive given the existing height;
- Adjoining sites (to the west) are subject to a maximum building height that is greater than the height being proposed.

It is considered that compliance with the development standard is unnecessary in this particular circumstance given that the development will be consistent with the existing built form on the site, will improve the overall aesthetic of the site and will generally be compatible with surrounding developments. As noted above, the additional variation sought for the air conditioning units is not supported (and thereby removed via condition) as there is insufficient environmental planning grounds to demonstrate that greater compliance cannot be achieved.

(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: The applicant has provided a written request to vary Clause 4.3 pursuant to Clause 4.6 and the matters are adequately addressed. The applicant's statement does not address the air conditioning height breach proposed.

(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 development will provide an increased visual aesthetic in a highly prominent position that is visible from many surrounding public places, and will provide additional housing supply and choice within the immediate vicinity.

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B1 Neighbourhood Centre zone in the WLEP 2011.

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

Comment:

Clause 4.6(4) (b) requires that the concurrence of the Director-General has been obtained.

As the height variation exceeds 10% it is not possible to assume the concurrence of the Director-General. Concurrence can now only be assumed if the consent authority (i.e Northern Beaches Local Planning Panel/or Sydney North Planning Panel) has first considered the following issues:

- *Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.*

The applicant and Council's Officers are of the opinion that there are no matters of significance for State or regional environmental planning as a consequence of the variation.

- *The public benefit of maintaining the development standard.*

In the circumstances of this particular development application, it is considered that there is no discernible or significant public benefit in maintaining the development standard given the overall consistency with the streetscape, existing development on site and negligible amenity impact. Therefore, variation to the standard will allow for a greater architectural aesthetic from the public domain.

The above is supported by Council's Officers.

The other consideration is whether there are any other matters which are required to be taken into consideration before granting consent. In the opinion of Council's Officers, there are not considered to be any other matters that are required to be taken into consideration. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of Buildings Development Standard can be assumed by the Northern Beaches Local Planning Panel.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	Complies
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B5 Side Boundary Setbacks	South - Merit Assessment	Nil	Yes
	East - Merit Assessment	22.7m	Yes
B7/B8 Front Boundary Setbacks	Ocean Street - Merit Assessment	3.5m	Yes
B7/B8 Secondary Front Boundary Setbacks	Malcolm Street - Merit Assessment	2.05m	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B10 Merit assessment of rear boundary setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes
F1 Local and Neighbourhood Centres	Yes	Yes

Detailed Assessment

D7 Views

Given the beachfront location of the subject site and the abundance of surrounding open spaces, careful consideration has been given to any potential view impacts that the development may cause upon surrounding sites. The two developments that would most likely be susceptible to view loss from the proposed third floor addition are the dwellings at 212-214 Ocean Street, and at 6-8 Malcolm Street.

Despite no submissions regarding view loss being raised, consideration must still be given to this issue.

A review of the approved architectural plans and the Construction Certificate plans of the two above addresses reveal that the roof terraces levels are not of such a height that would enable ocean views over the top of the subject development site.

Therefore, given that the vertical extension of the development (and horizontal) will not give rise to any unreasonable impact on any existing views, the application is assessed as being satisfactory in regards Part D7 of the DCP.

D9 Building Bulk

The architecture of the proposal is a sympathetic solution responsive to the existing built form upon the site.

The utilisation of entire planar facades of operable glazing significantly reduce any perceived visual bulk and massing of the proposed second floor.

Thereby, the second floor addition is considered acceptable on merit with regards to building bulk. However, the proposal also includes the relocation of the air conditioning units and the erection of louvre screening around said units. The units and screening sit atop of the proposed roof at a height of 1.26m which represents a significant variation to the Height of Buildings control and creates an unreasonable and unnecessary bulk.

The entire roof terrace of the building is trafficable and there are opportunities for the air conditioning units to be relocated in another portion of the roof area which will reduce the height to not be greater than the lift overrun. Therefore, a condition of consent recommended in this report requires the removal and relocation of the air conditioning units and louvre screening.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Warringah Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 595,000		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 5,653
Section 94A Planning and Administration	0.05%	\$ 298
Total	1%	\$ 5,950

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, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

The development application is for alterations and additions to an existing shop top housing development for the purpose of constructing a second floor addition over the western portion of the building containing one new residential apartment.

As the new apartment exceeds the Height of Buildings development standard (Clause 4.3 of the WLEP

2011) by more than 10% it is required to be determined by the Northern Beaches Local Planning Panel for its determination, in accordance with the Planning Circular issued by the Department on 15 December 2017 (PS 17-006).

The assessment of the application has found that the proposal has no unreasonable amenity impacts on any adjoining lands and will be of an architecture and scale that is appropriate for the context of the site, despite varying the development standard control.

Given the architecture and scale of the part two / part three storey shop top housing development that is pre-existing on the subject site, it is likely that the proposed addition will seamlessly blend into the building and will provide an enhanced streetscape aesthetic when viewed from the vast surrounding public open spaces and the adjoining residential properties and retail premises. Therefore, the building height variation sought pursuant to Clause 4.6 of the WLEP 2011 is supported by this assessment given the consistency with the existing building height on the site, the compatibility with surrounding sites and the negligible amenity impacts that arise from the development.

The additional variation sought to the building height standard for the installation of air conditioning units and their associated louvre screening atop of the roof of the second storey addition is not supported given the quantum breach proposed and the likely visual impact the units will have when viewed from adjoining sites (both present and in future). Given that there are alternative locations available atop of the existing roof, it is considered warranted to relocate the units via a condition of consent.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Northern Beaches Development Assessment Panel – Central as the consent authority grant Development Consent to DA2017/1136 for Alterations and Additions to a shop top housing development on land at Lot CP SP 89359, 209 - 211 Ocean Street, NARRABEEN, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-A-022 Rev. B	25 October 2017	Quattro Architecture
DA-A-102 Rev. C	13 February 2018	Quattro Architecture
DA-A-103 Rev. C	13 February 2018	Quattro Architecture
DA-A-200 Rev. C	13 February 2018	Quattro Architecture
DA-A-201 Rev. C	13 February 2018	Quattro Architecture
DA-A-250 Rev. C	13 February 2018	Quattro Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
National Construction Code Report	14 November 2017	Private Building Certifiers Pty Ltd
Assessment of Traffic and Parking Implications Ref.17196	October 2017	Transport and Traffic Planning Associates
NatHERS Certificate No. M956IIB6SM	19 February 2018	Wood & Grieve Engineers

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

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

Waste Management Plan		
Report Title	Dated	Prepared By
Waste Management plan	19 November 2017	Robert Chedid

In the event of any inconsistency between conditions of this consent and the drawings/documents

referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

2. Amendments to the approved plans

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

- The air conditioning units and associated louvre screening shall be relocated elsewhere on the roof terrace (RL18.560) and generally in the vicinity of the lift overrun, stairwell and lightwell. No part of the air conditioning units and associated louvre screening shall be of a height greater than the lift overrun (RL20.850).

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land. (DACPLB02)

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal 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)

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for

swimming pools.

- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Council Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Northern Beaches Council Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 595,000.00		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 5,652.50
Section 94A Planning and Administration	0.05%	\$ 297.50
Total	1%	\$ 5,950.00

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with Northern Beaches Council's Development Contributions Plan.

6. Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that

may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

7. Stormwater Disposal

Stormwater shall be disposed of to an existing approved system or in accordance with Council's "Water Management Policy PL 850" in particular the On site Stormwater Detention Technical Specification. The stormwater drainage system shall be designed by a NPER Civil Engineer registered with Engineer's Australia.

Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the "Water Management Policy PL 850" are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from development. (DACENC02)

8. Compliance with Standards

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

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

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

9. External Finishes to Roof

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

10. **Tandem Parking and Allocation of parking**

Tandem car parking spaces are only acceptable when both spaces are allocated to the same unit. The total volume of parking provided is to account for this allocation to ensure that parking provision for the other units is satisfied.

Reason: To comply with DCP (DACTRCPC1)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifying Authority.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

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

12. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with Council's On site Stormwater Detention Technical Specification and all relevant Australian Standards and Codes by a NPER Civil Engineer registered with Engineer's Australia.

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

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

13. **Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

14. **Positive Covenant for Waste Services**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to provide access to the waste storage facilities prior to the issue of an Interim/Final Occupation Certificate. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities (DACWTF03)

15. **Authorisation of Legal Documentation Required for Waste Services**

The original completed request form (Department of Lands standard form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or

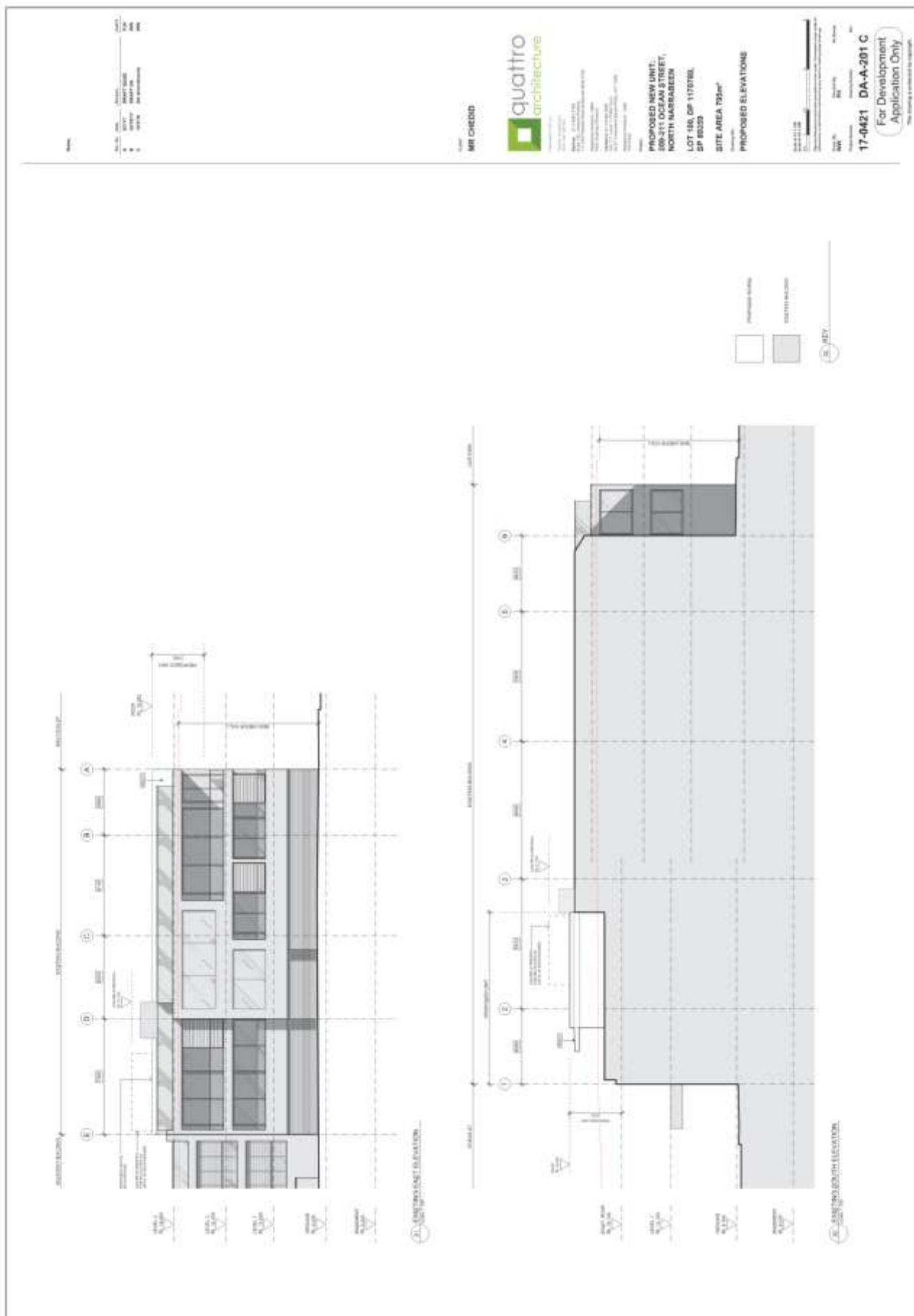
the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

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

Reason: To create encumbrances on the land. (DACWTF04)







4.0 REVIEW OF DETERMINATIONS

ITEM 4.1	REV2018/0003 - 43 BOORALIE ROAD TERREY HILLS - REVIEW OF DETERMINATION OF MODIFICATION OF DEVELOPMENT CONSENT DA2017/0233 TO MODIFY THE HOURS OF OPERATION OF AN APPROVED SERVICE STATION
REPORTING OFFICER	ADAM MITCHELL
TRIM FILE REF	2018/167493
ATTACHMENTS	1 ↓ Assessment Report

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. REV2018/0003 for review of determination of modification of development consent DA2017/0233 to modify the hours of operation of an approved service station at Lot 1 DP 545812, 43 Booralie Road, Terrey Hills for the reasons outlined in the Assessment Report.



REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2018/0003
Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot 1 DP 545812, 43 Booralie Road TERREY HILLS NSW 2084
Proposed Development:	Review of Determination of Modification of Development Consent DA2017/0233 to modify the hours of operation of an approved service station
Zoning:	Warringah LEP2011 - Land zoned IN2 Light Industrial
Development Permissible:	Yes
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Development Assessment Panel – Central
Land and Environment Court Action:	No
Owner:	Eastden Pty Limited
Applicant:	S.H.A Premier Constructions Pty Ltd
Application lodged:	19/01/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	23/01/2018 to 09/02/2018
Advertised:	Not Advertised
Submissions Received:	7
Recommendation:	Refusal
Estimated Cost of Works:	\$ 1,440,000.00

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 the subject site and adjoining, surrounding and nearby properties;



- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 96AB - Environmental Planning and Assessment Act 1979 - Section 8.2 (1) (b) (formally known as Section 96AB)
Warringah Development Control Plan - D3 Noise

SITE DESCRIPTION

Property Description:	Lot 1 DP 545812 , 43 Booralie Road TERREY HILLS NSW 2084
Detailed Site Description:	<p>The site is located on a corner allotment on the south eastern corner of Booralie Road and Tepko Road in Terrey Hills.</p> <p>The site is irregular in shape (trapezoidal) and has a surveyed area of 1088m² with a street frontage to Booralie Road of 31.1m and to Tepko Road of 45.3m.</p> <p>Presently the site accommodates a self-service petrol station with a canopy structure, signage and an older style building on the southern edge of the site.</p> <p>The site is upon land zoned for IN2 Light Industrial purposes and is bound by similarly zoned land to the south and west. North and east of the site is land zoned for R2 Low Density Residential development and accommodates residential accommodation of varying forms. A narrow strip of land zoned for Public Recreation runs along the eastern edge of the site and connects to Myoora Road. This strip of land provides a landscaped buffer between the residential and industrial zones.</p> <p>Given the established nature of the allotment, the land is generally flat with no topographical features and does not have any significant or noteworthy vegetation.</p>

Map:



SITE HISTORY

A review of Council records has revealed that the subject site has operated as a service station and associated uses over the past 30+ years.

A Pre-Lodgement Meeting (**PLM2016/0024**) was held with Council on 17 March 2016 to discuss the re-development of this site by means of utilising existing use rights pursuant to clause 4.11 of the Environmental Planning and Assessment Act 1979. A review of the existing use rights revealed that the site had no consented operating hours, thereby allowing for 24/7 use of the site. Council found that the 24/7 operation was unreasonable, unsuitable and incompatible with the character of Terrey Hills and the surrounding industrial area.

Apart from the proposed 24/7 operating hours proposed in the PLM, Council was generally supportive of the proposal to re-develop the site.

Subsequent to this meeting, **Development Application No. 2016/0523** was lodged with Council for demolition works and construction of a service station and signage.

This application sought for operating hours between 6.00am and 12.00pm, 7 days a week, however during the assessment of the application and as noted in the above PLM, Council considered these hours unreasonable for the following reasons:

The application seeks development consent to operate the service station from 6.00 am to 12.00pm, 7 days a week.

An Operational Noise, Construction Noise & Vibration Management Plan dated 2 May 2016 prepared by Rodney Stevens Acoustics was submitted with the application. The report has found that the noise impact has been predicted to exceed the 'noise affected' management level at the majority of considered receiver



locations. In this regard, the report recommends the construction of a 1.5-metre high solid Colorbond barrier to be installed around the perimeter of the south/east boundaries of the proposed service station and a 1.2-metre high solid Colorbond barrier be installed around the air conditioning unit on the rooftop of the proposed service station.

Notwithstanding the findings of the Acoustic Report, it is considered the proposed operating hours are excessive and would cause unreasonable disturbance to neighbouring properties. Whilst the mitigation measures outlined in the acoustic report may reduce noise impacts from vehicles, the report does not consider noise caused by the opening and closing of car doors, the voices of customers using the service station, car radios etc. all of which may vary in intensity. Given that the site is located in a locality that is primarily for residential purposes, the proposed hours of operation are considered unreasonable and the impacts on adjoining residential occupiers would be detrimental to their amenity.

As such, it is recommended a condition be imposed so that the hours of operation be reduced to between 6.00 am to 10.00 pm (Monday to Friday) and 7.00am - 9.00pm (Saturday, Sunday, and public Holidays) . Further, a condition shall also be imposed restricting deliveries and garbage collection to between 7.00 am and 8.00 pm, 7 days a week.

Given the public interest in the application, a determination was made by the Northern Beaches Development Assessment Panel following a public meeting on Wednesday 12 October 2016 to endorse the recommendations of Council's report.

Modification Application No. MOD2017/0324

A modification application pursuant to Section 96 of the Environmental Planning and Assessment Act 1979 was lodged with Council on 9 December 2016 and sought to change the approved hours of operation and signage illumination approved under DA2016/0523.

The application proposed the following hours of operation:

- **Monday - Sunday and Public Holidays - 6:00 am to 12:00 midnight**

Council was unsatisfied with the application and requested (on 14 February 2017) that an Operational Management Plan (OMP) be submitted to accompany the development application. Council advised the Applicant that if the OMP was unsatisfactory, then support for extended hours would not be granted.

Council received the OMP from the Applicant on 16 February 2017 which proposed new operating hours (noting that no formal request to change the proposed hours was received). The new hours were:

- **Monday to Friday - 5:00 am - 11:00 pm;**
- **Saturday - 6:00 am - 11:00 pm; and**
- **Sunday and Public Holidays - 7:00am - 10:00pm**

Council was not satisfied with the OMP and subsequently recommended the refusal of the application. The application was refused by the Northern Beaches Development Assessment Panel on 8 March 2017 as per Council recommendation.

The minuted proceedings in brief from the Panel reads:



This is a modification application to consent DA2016/0523 granted for demolition works, the construction of a service station and associated signage at 43 Booralie Road Terrey Hills. This site benefits from existing use rights.

DA2016/0523 was approved by the Northern Beaches Development Assessment Panel on 12 October 2016 at its meeting at which the Panel endorsed the council planner's recommendation that the operating hours of the development be limited to 6 am. to 10 pm. Monday to Friday and 7 pm. to 9 pm. Saturday, Sunday and public holidays.

The application before the panel seeks to extend the approved hours as follows:

- *Monday to Sunday and public holidays 6 am to 12 midnight and the application also sought to amend condition No. 37 which relates to the hours of the illumination of the signage on the site.*

The Panel took a view of the site and at the public meeting which followed heard from two residents who live nearby to the site and two representatives of the Applicant.

The level of information provided to the panel was inadequate and did not justify any change to be approved hours of operation. The applicant did not satisfactorily respond to questions by the Panel in relation to concerns raised.

The resolution of the Panel was therefore that the modification application be refused.

Modification Application No. MOD2017/0223

A second modification application was lodged with Council on 30 August 2017 and sought for an amendment to Condition 36 *Hours of Operation* to match the hours proposed in OMP received under the previous modification application (as highlighted in bold above).

During the notification period of the application Council received 5 submissions, all opposing the application.

The Assessment Report prepared by Council concluded with the following comments relating to the assessment and recommendation of the report:

The section 96 application for extended operating hours at an approved service station has been consequent of several previous applications and on-going correspondence with Council. The acoustic impact of the extended operating hours upon neighbouring residents has been of continuous concern to both Council and the community, as evident through previous determinations by the NBIAP panel.

The documentation submitted to accompany the application detail that the proposal is compliant with all relevant acoustic legislation and that all reasonable noise mitigation methodologies have been employed into the design and operational management plan of the site to ensure the development has the least possible impact on surrounding properties.

Council is of the opinion that, if well managed, the site can operate in harmony with the surrounding residential properties and that the extended hours will not be of any detriment to neighbourhood amenity. Council is similarly of the opinion that if the site is not well managed, that the development could create unreasonable amenity impacts upon adjoining residential properties.



Accordingly, the recommendation of this report requires the implementation of a 12-month "trial period" with rigorous reporting requirements to the Northern Beaches Council per quarter. The condition (which requires a future section 96 application to be lodged to make the hours permanent) is enforced with the intent to encourage the service station operators and developers to manage the site with best practice to; (a) create harmony within the community through preserved amenity; and (b) provide the applicant the additional operating hours.

The Northern Beaches Independent Assessment Panel determined the application by way of approval on 13 December 2017 and modified the pre-existing Condition 36 to reflect the trial-period (a full copy of the condition can be found in the Proposed Development section of this report). Additionally, the consent added several other conditions relating to the operation of the air compressor, the requirement to have a 24/7 telephone hotline for complaints registration and two other conditions pertaining to offensive noise and acoustic management.

PROPOSED DEVELOPMENT IN DETAIL

The review application has been lodged pursuant to Section 8.2 (former S96AB) of the Environmental Planning and Assessment Act 1979 in relation to the determination of MOD2017/0223 by the Northern Beaches Independent Assessment Panel on 13 December 2017.

The application has asked that several conditions imposed in the approved MOD2017/0223 be reviewed by an alternate Panel. The conditions requested for amendment read as follows:

36. Hours of Operation

The hours of operation of:

- *Monday to Friday - 6:00am to 11:00pm*
- *Saturday - 6:00am to 11:00pm*
- *Sunday and Public Holidays - 7:00am to 10:00pm*

are approved subject to a 12 month trial period from the date of commencement of use following the issue of an Occupation Certificate.

At the end of the 12 month trial period if the applicant wishes to make the hours of operation permanent, the applicant must lodge a Section 96 Modification Application together with supporting documentation (including details of the reports referred to below) to the Northern Beaches Council on or before 2 months prior to the end of this 12 month period.

During the 12 month trial period the applicant is to provide to the Northern Beaches Council every 3 months an acoustic report which details:

- *A daily log of the number of vehicles entering and leaving the property between the hours of 10pm and 11pm;*
- *Compliance with the noise criteria in the NSW EPA Industrial Noise Policy;*
- *All complaints received from the date of operation to present, details of the complaint and details of what action has been taken;*
- *Certification from an acoustic consultant that the recommendations and requirements of the two*



reports referenced above in Condition No. 1A have been satisfied.

Upon cessation of the 12 month trial period, the hours of operation are to revert to the following:

- *Monday to Friday - 6:00am to 10:00pm*
- *Saturday, Sunday and Public Holidays - 7:00am to 9:00pm*

In accordance with the approved development consent DA2016/0523.

Reason: To protect the amenity of residential properties.

And

36B. Phone Hotline

A 24 hour hotline phone number is to be distributed to all surrounding residential properties and is to be manned at all times.

Complaints received through the hotline are to be logged and provided to an acoustic consultant for potential corrective action. The log is to detail who made the call, at what time/date, what the complaint was and what action has been taken.

The log is to be made available to Council upon request and will be considered in future Section 96 applications.

Reason: To ensure development minimises unreasonable impacts in accordance. (DACPLB02).

The Applicant requests that Condition 36 have reference to a 'Trial Period' removed entirely. The Applicant also requests that Condition 36B be reviewed, but does not indicate what they wish to happen with this condition.

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: In accordance with Section 8.2 (1) (b) of the Act, an applicant for the modification of a development consent for which a council is the consent authority may request the council to review a determination by the council under Section 4.55 (formally 96 or 96AA) of the Act. Council is the consent authority for the modification application MOD2017/0223, and can therefore conduct the review.

In accordance with the requirements of Section 8.3 (2) of the Act, the review must be carried out by:

- (a) if the determination was made by the council—the council, or
- (b) if the determination was made by a delegate of the council—by the council or another delegate of the council who is not subordinate to the delegate who made the determination.



Comment: The determination was made by a delegate of Council (the Northern Beaches Independent Assessment Panel) and the review has been carried out by a delegate of Council who is not subordinate to the delegate who made the determination (an alternate Panel).

In accordance with Section 8.10 (1) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the modification application. The application was determined on 13 December 2017 and the notice of determination was issued on 22 December 2017. The review was lodged on 19 January 2018 and is to be considered by the Northern Beaches Local Planning Panel on 21 March 2018, which is within 6 months of the date of determination.

Section 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining a modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in Section 4.15(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> 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 in the original consent.</p> <p><u>Clauses 54 and 109</u> 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.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p>

Section 79C 'Matters for Consideration'	Comments
	<p>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 in the original consent.</p> <p>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 in the original consent.</p>
<p>Section 4.15(1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The proposed application is seeking the deletion of the conditioned 12 month trial period which is considered likely to give rise to adverse environmental impact on the amenity of adjoining and nearby residents. The previous and approved modification application (the subject of this s8.2 (1) (b) review) detailed that, if the site is to operate successfully then the environmental impact on surrounding residents would be negligible and acceptable and would likely result in the hours being granted upon cessation of the trial period. However, if the operation of the site differs from the operation envisaged by Council, it is likely that the development would give rise to adverse amenity and environmental impacts upon surrounding residents and the trial hours would not be made permanent.</p> <p>Accordingly, it is found that the request to remove the trial period condition pertaining to the operative hours of the site will have an unreasonable and detrimental environmental impact on the locality as it could give rise to unreasonable and adverse amenity impacts upon the community.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the approved use as a service station, however the hours sought are considered unreasonable unless governed through a trial period.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Public Exhibition” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>From the submissions which have been received it is evident that the community is generally supportive of the proposed trial period condition which has been imposed by Council in MOD2017/0223. It is within the public interest that Council ensures that the operation of the site will not be of</p>



Section 79C 'Matters for Consideration'	Comments
	<p>unreasonable detriment to the community, and the condition imposed as such provides a mechanism for the operating hours to be reduced to a lesser quantum should the site impact on adjoining properties (thereby not being consistent with the public interest).</p> <p>Similarly, if the site operates successfully and as intended by the Applicant, then it is reasonably expected that the trial period hours would be made permanent by Council and that the service station and residential properties could co-exist in harmony.</p>

EXISTING USE RIGHTS

The use of the land as a 'Service Station' as per the WLEP 2011 is a prohibited land use and as such, the development is reliant upon Existing Use Rights as per Cl. 107 of the Environmental Planning and Assessment Act 1979.

The parent development application (Assessment Report by Northern Beaches Council) established that the site does in fact benefit from Existing Use Rights and reads:

Council's record reveals that a Service Station was approved on the site under Consent No. 70/246, dated 20 December 1970. The applicant has provided evidence in the form of day sheet records which reveals that the use of the land commenced as a lawful purpose and has now ceased operation since 17 November 2015, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

And

The applicant has provided evidence in the form of day sheet records which reveals that the use of the land was carried out since its original approval in 1970's, however, the site ceased operation on 17 November 2015, which is within one year from the date on which the provision having the effect of prohibiting the use commenced.

And as noted earlier in this report, the development consent from 1970 did not include any conditions which restricted the hours of operation.

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 the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 7 submission/s from:

Name:	Address:
Mr Daniel Gary Samuel Cook	37 Booralie Road TERREY HILLS NSW 2084
Gordon Lynas	4 Wanari Road TERREY HILLS NSW 2084
Ms Pamela Annette Acott	5 Currong Circuit TERREY HILLS NSW 2084



Name:	Address:
Mr Donald Joseph Watts Mrs Judith Mary Watts	12 Jinchilla Road TERREY HILLS NSW 2084
Mr Peter Geoffrey Addison	2 Wanari Road TERREY HILLS NSW 2084
Mrs Diana Wendy Pecar	37 Burruga Avenue TERREY HILLS NSW 2084
Mrs Carol Audrey Parr	1 Jinchilla Road TERREY HILLS NSW 2084

During the public notification period of this review application Council received seven individual submissions from surrounding properties. Six submissions received were opposed to the development, and one received was in support.

The submission in support reads:

... are in favour of the proposed filling station and bus parking development as it provides support for our excellent bus operator (Forest Coachlines), and adds a new utility to the Terrey Hills area without any obvious negative aspects as the site is sufficiently remote from the Terrey Hills village.

The submissions opposing the application raise the following matters, with a comment by Council on each:

Retention of Trial Period Condition

Several submissions received note that, whilst the objectors may not be happy with the previously imposed trial period condition, they deem it as a reasonable compromise to ensure that the operation of the site has no unreasonable nor adverse impacts upon surrounding neighbours. Submissions received also raise historical management issues pertaining the to current operation of the site, and cited this as further reasoning to maintain the trial period condition.

On review of the submissions received under both this Review application and the previous MOD2017/0223, the surrounding community is supportive of the development of the site, however the hours requested have been a continuous objection to the application. In this regard, Council concurs that the retention of the trial period condition is essential to provide a period of time to allow the applicant the fair and equitable opportunity to demonstrate that the development will be compatible and harmonious with the surrounding and prevailing residential character of Terrey Hills.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<p>The application has been reviewed by Council's Environmental Investigations Officer whom has provided the following commentary regarding the application (modified by Planning Officer to avoid repetition in the report):</p> <p><i>The application is still unable to deal with potential 'offensive noise' created by customers and their vehicles as these are outside the</i></p>



Internal Referral Body	Comments
	<p><i>realm of control of the applicant and / or operator. Plant and machinery noise can be managed adequately.</i></p> <p><i>Environmental Investigations consider the trial period condition enforced in MOD2017/0223 to be reasonable due to the potential impact of the development on residential receivers in close proximity to the site. The trial period would allow for real time assessment, management and potential compliance with the final option being a restriction to the original approved hours.</i></p> <p><i>This action of a trial period is similar to that historically imposed by the Land and Environment Court in similar circumstances and has merit in satisfying both the community and the applicant by allowing the development to take place whilst ensuring the amenity of surrounding residents is maintained.</i></p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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 Environmental Plan 2011

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

Detailed Assessment



Warringah Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
D3 Noise	No	No

Detailed Assessment

D3 Noise

The conditions which are being contested in the s8.2 review pertain to the enforcement of acoustic related conditions, imposed to ensure adequate preservation of the amenity of surrounding land owners to a level that is equal of greater than is current. The review application relies on the previously submitted Operational Noise Management Plan and the Noise Impact Assessment, both by Rodney Stevens Acoustics, and submits no additional information in support of the requested review other than a letter dated 18 January 2018.

The letter accompanying the review application requests that the following conditions be reviewed by Council:

Condition No. 36 - Hours of Operation

The hours of operation of:

Monday to Friday - 6:00am to 11:00pm

Saturday - 6:00am to 11:00pm

Sunday and Public Holidays - 7:00am to 10:00pm

are approved subject to a 12 month trial period from the date of commencement of use following the issue of an Occupation Certificate.

At the end of the 12 month trial period if the applicant wishes to make the hours of operation permanent, the applicant must lodge a Section 96 Modification Application together with supporting documentation (including details of the reports referred to below) to the Northern Beaches Council on or before 2 months prior to the end of this 12 month period.

During the 12 month trial period the applicant is to provide to the Northern Beaches Council every 3 months an acoustic report which details:

- A daily log of the number of vehicles entering and leaving the property between the hours of 10pm and 11pm;*
- Compliance with the noise criteria in the NSW EPA Industrial Noise Policy;*
- All complaints received from the date of operation to present, details of the complaint and details of what action has been taken;*
- Certification from an acoustic consultant that the recommendations and requirements of the two reports referenced above in Condition No. 1A have been satisfied.*



Upon cessation of the 12 month trial period, the hours of operation are to revert to the following:

Monday to Friday - 6:00am to 10:00pm

Saturday, Sunday and Public Holidays - 7:00am to 9:00pm

In accordance with the approved development consent DA2016/0523.

Reason: To protect the amenity of residential properties.

And:

Condition No.36B - Phone Hotline

A 24 hour hotline phone number is to be distributed to all surrounding residential properties and is to be manned at all times.

Complaints received through the hotline are to be logged and provided to an acoustic consultant for potential corrective action. The log is to detail who made the call, at what time/date, what the complaint was and what action has been taken.

The log is to be made available to Council upon request and will be considered in future Section 96 applications.

Reason: To ensure development minimises unreasonable impacts in accordance. (DACPLB02).

The letter indicates that the applicant concurs with the hours that were approved despite being lesser than originally requested, but opposes the trial period element of the consent; in essence requesting that the hours be made permanent. Additionally, whilst not explicitly stated, the applicant is requesting the review (and presumed removal) of condition No. 36B - Phone Hotline.

The letter raises the following reasons as to why the requested review should be considered by Council (extracts from letter):

- *A 12 month trial basis creates uncertainty for both the applicant and the community and is likely to create further agony as all parties concerned will yet again be subject to an extensive and prolonged process;*
- *It should furthermore be acknowledged that the site has existing use rights (allowing it to operate 24 hours) and formal approval to re-develop the current service station;*
- *An additional hour from 10pm to 11pm is considered completely reasonable and justified based on the expert evidence presented in the form of multiple acoustic reports, noise modelling and a noise management plan by Rodney Stevens Acoustic consultants;*
- *It is unprecedented to expect a developer to invest millions of dollars on the basis of a trial period. It is not considered standard practice or a sound business approach; and*
- *Conditions relating to the submission of a three monthly acoustic report and record keeping of vehicles are considered unreasonable and unnecessary, taking into account that an Operational Noise Management Plan has been developed.*

The applicant's request for review has been reviewed in light of all factors pertaining the previous assessments, the context of the site itself and the matters that have been raised in the aforementioned



letter.

Council concurs with the previous determination issued by the Northern Beaches Independent Assessment Panel and considers that the conditions imposed do not unreasonably impact on the operational potential of the site and provide an equitable balance and opportunity for the applicant to demonstrate that the service station can co-exist in harmony with the surrounding predominant residential area. Additionally, the reasoning for the enforcement of the condition detailed in the Assessment Report of MOD2017/0223 is found to be current and justified and need not be repeated.

In the circumstances of this application, the previously issued consent is not found to be unreasonable given that it provides the applicant with most of the operating hours requested, subject to a trial period to demonstrate that there will be no unreasonable or adverse impacts on adjoining neighbours. Should the site operate in the manner envisaged by the consent, then it is not foreseen that there will be any issue in granting consent in the future to make the hours permanent. If the operation of the site is not considered successful, then the reverted hours are considered to be appropriate to maintain the amenity of surrounding residents whilst still providing a reasonable provision of operational hours for the business. The condition equitably balances the rights and reasonable expectations of both the developer and community.

Accordingly, the recommendation of this Assessment Report supports the previously adopted conditions of consent and does not recommend that they be revised.

Additionally, the imposed 24/7 manned phone hotline is considered to be reasonable given the use of the site as a service station and the fact that, at some periods, there may be no staff present to supervise in the case of an emergency.

The hotline also provides the applicant a direct connection to the community that provides a more suitable approach to remedy any conflicts, rather than requiring the intervention of Council through compliance action, and thereby impacting on the opportunity to make the trial hours permanent.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

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:

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

CLOSING SUMMARY OF REVIEW

This subject Section 8.2 Review application (formally Section 96AB) requested that Council review conditions imposed in the recently approved MOD2017/0223.

The site has been used for the purposes of a service station for many years, and has recently had a development application approved for the complete redevelopment of the site, inclusive of new operational conditions. The hours approved were considered appropriate given the location of the site in a relatively "dead-end" residential area (being that Terrey Hills is not usually used as a thoroughfare between locations and that no evidence has been supplied to demonstrate a demand for the facility at the hours being sought). The site presently benefits from existing use rights in that there are no restrictions on the hours of operation, however these rights will cease upon the activation of the new development consent and the trial period will commence.

Accordingly, the applicant has attempted several times to modify the development consent to extend the approved operating hours.

Most recently, the former Northern Beaches Independent Assessment Panel (NBIAP) approved an extension to the hours of operation, subject to them being on a trial period basis. On review of submissions received for this current review application, the community appears to be relatively supportive of the trial period imposed as they find it gives the applicant an adequate and fair opportunity to demonstrate that the operation of the development will not have any adverse impact on the amenity of surrounding land. The applicant however considers the condition to be unreasonable for the reasons of expert reports previously submitted, the existing hours of operation and the economic viability of the development (i.e. building a business on a 12 month trial basis).

The predominant concern does not arise by any action of the developer or business operator, rather it arises from the uncontrollable nature of noises generated by patrons and the level of audibility and disturbance this may cause to other surrounding residents, again noting the prevailing residential surrounds.

The existing consent has been framed in such a way that will likely permit the permanence of the trial period hours if the business operates successfully, but will reduce the hours by a minor amount after the cessation of the trial period if the operation is unsuccessful, to ensure that any acoustic impacts caused by the development are restricted to lesser hours.



To date, Council and the community (as evident through the majority of the submissions received) cannot be wholly satisfied that the hours sought won't give rise to detrimental amenity impacts and accordingly, the recommendation for a trial period of operating hours previously approved remains supported. 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 Northern Beaches Development Assessment Panel – Central , as the consent authority REFUSE REV2018/0003 for the Review of Determination of Modification of Development Consent DA2017/0233 to modify the hours of operation of an approved service station on land at Lot 1 DP 545812,43 Booralie Road, TERREY HILLS, 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 provisions of Clause Zone IN2 Light Industrial of the Warringah Local Environmental Plan 2011.
2. 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.