

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 18 APRIL 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

Peter Biscoe	Chair
Steve Kennedy	Urban Design Expert
Annelise Tuor	Town Planner
Ray Mathieson	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 18 April 2018
in the Council Chambers, Civic Centre, Dee Why
Commencing at 1.00PM**

1.0 APOLOGIES & DECLARATIONS OF PECUNIARY INTEREST

2.0 MINUTES OF PREVIOUS MEETING

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Demolition works, Construction of a Seniors Housing Development and Strata
Subdivision 102

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construction of a seniors living development..... 141

4.0 REVIEW OF DETERMINATIONS

Nil

5.0 PLANNING PROPOSALS

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 4 APRIL 2018

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 4 April 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 DA2017/1352 - 9 LAURA STREET, SEAFORTH -
CONSTRUCTION OF A NEW DWELLING HOUSE

REPORTING OFFICER RODNEY PIGGOTT

TRIM FILE REF 2018/222324

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. DA2017/1352 for construction of a new dwelling house at Lot 1 DP 120934, 9 Laura Street, Seaforth subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2017/1352
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 1 DP 120934, 9 Laura Street SEAFORTH NSW 2092
Proposed Development:	Construction of a new dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Husniye Yavuz
Applicant:	Robert Ursino Design Pty Ltd
Application lodged:	22/12/2017
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	28/12/2017 to 29/01/2018
Advertised:	Not Advertised
Submissions Received:	2
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,815,000.00

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

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.2.1 Wall Height
 Manly Development Control Plan - 4.1.2.2 Number of Storeys
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.4.2 Side setbacks and secondary street frontages
 Manly Development Control Plan - 4.1.4.4 Rear Setbacks
 Manly Development Control Plan - 4.1.5.1 Minimum Residential Total Open Space Requirements
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
 Manly Development Control Plan - 4.1.9.1 Height above ground
 Manly Development Control Plan - 4.1.9.2 Location and Setbacks

SITE DESCRIPTION

Property Description:	Lot 1 DP 120934 , 9 Laura Street SEAFORTH NSW 2092
Detailed Site Description:	<p>The subject site consists of one allotment located on the south-western side of Laura Street and on the northern side of Laura Lane.</p> <p>The site is irregular in shape with a frontage of 14.645m along Laura Street and an average depth of 14.645m. The site has a surveyed area of 600.7m².</p> <p>The site is located within the Low density Residential zone and is currently a vacant allotment.</p> <p>The site has a crossfall of approximately 10-12m across the site, sloping from Laura Street at the front of the site to the rear at Laura Lane.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential dwellings and public recreation land.</p>

Map:



SITE HISTORY

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

Application 10.2013.153.1 for Boundary Realignment of the existing three (3) lots (05/02/2014)

Application DA2017/1352 for Construction of a new dwelling house

Application 10.2017.199.1 for Construction of a new dwelling house (16/10/2017)

Application 10.2007.524.1 for Demolition of existing Dwelling and construction of a new three (3) storey Dwelling (24/04/2011)

Application 5.1994.434.1 for DA0434/94 BA 468/94 Deck

Application 11.2007.524.1 for Demolition of existing Dwelling and construction of a new three (3) storey (12/04/2013)

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for a new dwelling house involving:

Garage Level

- Entrance
- Garage
- Gallery and wet bar
- Terrace
- Lift and stairs

Upper Floor Plan

- Open plan kitchen, living and dining
- Bedroom and balcony with WC
- Lift and stair access

Middle Floor

- Three bedrooms, ensuite, robe and bathroom.
- Access to rear yard and service zone
- Lift and stairs access

Lower Floor

- Entertaining area with bathroom and laundry
- Lift and stair access

External

- Swimming pool and deck
- Lounge and firepit
- Landscaping
- Roof garden

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	Manly 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 clause is not relevant to this application.</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 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 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>
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) The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) 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 2 submission/s from:

Name:	Address:
Mr Constantine Bousgas	6 Laura Street SEAFORTH NSW 2092
Mr Nicholas Peter Manettas	Care Nick's Restaurant Group 125/158-166 Day Street Sydney NSW 2000

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

- Informal parking area will cause issues with access
- Bulk and scale
- Building height
- Impact on sunlight and overshadowing

The matters raised within the submissions are addressed as follows:

- Informal parking area will cause issues with access
Comment:
The proposed 'informal parking area' is contained solely on the site and involves a cross over consistent with parking spaces of this size. In addition, the proposed open space and landscaped area is compliant so the space is deemed reasonable.
- Bulk and scale
Comment:
An assessment of bulk and scale has been made including an assessment of height and floor space ratio. This assessment has found the proposal to be reasonable.
- Building height
Comment:
The applicant requested a variation to the development standard for building height. This variation has been considered to meet the requirements of Clause 4.6- Exceptions to development standards and comments are provided below.
- Impact on sunlight and overshadowing
Comment:
The proposal meets the numerical requirements for sunlight access and overshadowing under the Manly DCP and is therefore deemed to comply with the relevant objectives.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>1. Is the Informal Carpark Area within the area calculated as 'landscaped area'. No plan reference is provided that shows what areas are used to calculate 'landscaped areas'. Rather the SoEE reports compliance to this numerically.</p> <p>2. The Statement of Environmental Effects notes that the landscape plan provides a green roof over the proposed garage. The landscape plan provides notation for pebbles on membrane. Clarification is required whether the garage roof is a 'green' roof or a 'built form' roof.</p> <p><u>Assessing Officer Comment</u></p> <p>The Assessing officer completed a calculation which did not include the parking areas as any form of open space.</p> <p>A condition has been provided in relation to the garage.</p>
NECC (Bushland and Biodiversity)	Council's Bushland and Biodiversity Officer provided no objection, subject to conditions.
NECC (Coast and Catchments)	Council's Coast and Catchment officer supports the application, subject to conditions.
NECC (Development Engineering)	Council's Development Engineer has no objection to the application, subject to conditions.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The application was referred to AUSGRID and no objection was raised.
Aboriginal Heritage Office	<p>The Aboriginal Heritage officer provided the following comment:</p> <p>"Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council</p>

External Referral Body	Comments
	should be contacted."

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	11.6m	17.6%	No, see comments
Floor Space Ratio	FSR: 0.4:1 (240.28m ²) Site area: 600.7m ²	FSR: 0.48:1 (291m ²)	21.1%	No, see comments.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes

Detailed Assessment

4.6 Exceptions to development standards

Height of Building

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

Numerical

Requirement:	8.5m ²
Proposed:	11.6m 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	17.6%

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

Is the planning control in question a development standard?

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

What are the underlying objectives of the development standard?

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

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

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

Comment:

The subject site is located on a slope below Seaforth Crescent, on Laura Street and with a rear boundary adjacent to Laura Lane. This slope provides a situation in which the presentation of bulk to both Seaforth Crescent and Laura Street is minimised as the proposed dwelling steps down the slope. In addition, the dwelling would be located below a significant section of vegetation and rock features on Laura Street so that the presentation of bulk would be further minimised. The visual presentation of bulk will be greater from Laura Lane and the foreshore, however this is consistent with dwellings on this slope in the area and as such the proposed height is reasonable.

b) to control the bulk and scale of buildings,

Comment:

The proposed dwelling will step down the slope so that the height non-compliance only occurs at the rear of each section of the building. This means the front of the dwelling at the entrance (garage floor level) is compliant and the front section of the upper floor plan is also compliant with building height. This means that despite these rear sections of the building having a non-compliance with the building height, the building generally steps down the site to result in an

appropriate bulk and scale given the context of the area and lack of unreasonable amenity impact.

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:

As a result of the location of the proposed dwelling and lack of adjacent areas dwellings and residential sites for obtaining views (due to the unusual subdivision pattern), the proposed dwelling would not have any unreasonable impact on views. The proposed stepping down of the dwelling which is generally with the slope of the site also ensure the height of the proposal would not have an unreasonable impact on 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:

As a result of the varied surrounding subdivision pattern and the resulting reasonable physical separation to the south, the proposal is consistent with the controls for sunlight access and overshadowing under the Manly DCP. This also provides a situation in which there is appropriate solar access for public and private open spaces.

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:

The proposal is adjacent to an area zoned for public recreation. The proposed dwelling would not have any unreasonable impact on this area due to reasonable setbacks and an adequate provision of bulk across the site.

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 the R2 Low Density Residential zone:

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

Comment:

The proposal is for a dwelling house. It is considered that the development satisfies this objective.

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

Comment:

Not applicable.

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:

In this circumstance, providing flexibility to the height of building development standard is appropriate as the non-compliance does not lead to any unreasonable amenity impact and would be appropriate given the topographical context of the area.

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

Comment:

It is appropriate to allow flexibility in this circumstance as an addition of floor space can be made to the dwelling without having any unreasonable impact on amenity and the proposed development would be visually appropriate given the context of the site and topographical nature of the surroundings.

(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 development standard is both unreasonable and unnecessary and that there are sufficient grounds to justify contravening the standard. This includes the following reasoning:

"It has been determined that the development has a maximum height of 11.5 metres measured to the southern edge of the upper floor plan balcony roof form. The majority of habitable floor plate sits below the 8.5 metre height standard with the steep topography of the land contributing significantly to the areas of non-compliance. The maximum extent of non-compliance is 2 metres or 23.5%.

Having regards to the zone objectives we have formed the considered opinion that strict compliance is unreasonable and unnecessary for the following reasons:

- *The height, bulk, scale and finished roof level of the building are entirely consistent with the built form characteristics established by adjoining development and development generally within the sites visual catchment. The height and form of the development is consistent with the desired future character of the area.*
- *Given the steep topography of the site, strict compliance with the 8.5m development standard would unreasonably restrict the development potential of the land.*
- *It has been determined that the building height proposed will not give rise to any unacceptable residential amenity impacts in terms of overshadowing, privacy or visual bulk.*
- *The proposal, by virtue of its height, provides for the reasonable sharing of private views.*
- *Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development, by virtue of its height offensive, jarring or unsympathetic having regard to the built form characteristics of development within the sites visual catchment as depicted in the photomontage at Figure 4 below [see Statement of Environment Effects].*

Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings when viewed from the harbour, foreshore areas, public domain and surrounding residential properties.

In the recent 'Four2Five' judgement (Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

In this regard, we have formed the considered opinion that there are sufficient environmental planning grounds to justify contravening the development standard including the steep topography of the site and the building heights established by surrounding development and development generally within the sites visual catchment.

Under such circumstances approval would not be antipathetic to the public interest.

Conclusions

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and*
- (b) that the contextually responsive development is consistent with the objectives of the height of buildings standard, and*
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and*
- (d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (e) that given the developments ability to comply with the zone and height of buildings standard objectives that approval would not be antipathetic to the public interest, and*
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.*

As such, we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance."

(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:

In this circumstance, it has been demonstrated by the applicant that compliance with the development standard would be unreasonable and unnecessary due to a design that in the context of the features of the site and surroundings contribute to providing a development that would have no unreasonable impact. In particular, the setbacks and step down with topography of each floor level on sloping land would both ensure a reasonable presentation in the street and a lack of amenity impact to adjoining properties through appropriate physical separation. As a result, the lack of impact and topographical nature of the site provide sufficient planning grounds to justify contravening the development standard.

(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 Secretary 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.

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:	0.4:1
Proposed:	0.48 (292m 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	21.1%
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The proposal must satisfy the objectives of 4.4 Floor Space Ratios, 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 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 MLEP 2013 are:

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

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

The proposal is for the construction of a new dwelling on land that slopes from Laura Street down toward Laura Lane and the Harbour foreshore. At this location on the lower side of Laura Street and also Seaforth Crescent, the predominant building style is for dwellings to be stepped down the slope. The proposed dwelling also have this feature and as such will have a presentation of bulk and scale that is appropriately minimised from the street. In addition, the dwelling is located within a unique subdivision pattern and below some significant landscape features (vegetation and rock) on Laura Street so that with this step down design, the presentation of bulk would be sufficiently minimised.

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

The proposal adequately controls bulk in relation to the site and context of the area by responding appropriately to the topography and providing reasonable setbacks. As a result of this stepping down and the location of the dwelling, majorly below both Laura Street and Seaforth Crescent, there would be no unreasonable obscurement of any landscape or townscape features.

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

The proposal is located on a site that is on the lower side of Laura Street (to the south-west). The proposal responds to the topography of the site and provides a compliant amount of total open space so that there would provide an appropriate visual relationship between the new development and existing character of the area.

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

As a result of the location down slope and reasonable physical separation including

reasonable setbacks, environmental impacts will be appropriately minimised.

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

Comment:

Not applicable.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R2 Low Density Residential zone.

The underlying objectives of the R2 Low Density Residential zone:

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

Comment:

The proposal is for a dwelling house.

It is considered that the development satisfies this objective.

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

Comment:

Not applicable

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:

In this circumstance, providing flexibility to the floor space ratio development standard is appropriate as the non-compliance does not lead to any unreasonable amenity impact and would be appropriate in the context of the existing development and subdivision pattern in the area.

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

Comment:

It is appropriate to allow flexibility in this circumstance as an addition of floor space can be made

to the dwelling without having any unreasonable impact on amenity and the proposed development would be visually appropriate given the context of the site and topographical nature of the surroundings.

(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 justification to contravening the development standard:

"It has been determined that the proposal has a gross floor area of 300m² representing a floor space ratio of 0.49:1. This represents a non-compliance of 56.8sqm or 23%.

We note that the recently approved dwelling on the adjoining site to the west, No. 31 Seaforth Crescent (DA178/2014) has an approved GFA of 336.42 square metres some 36 square metres greater than that proposed on the subject site.

We note that clause 4.1.3 of Manly Development Control Plan 2013 contains FSR exemption provisions applicable where the site area is less than the minimum Lot size required on the LEP Lot size map provided the relevant LEP objectives and the provisions of the DCP are satisfied. The Lot size map identifies the subject site as being in sub zone "U" in which a minimum Lot area of 750m² is required. The site having an area of only 608m² is well below the minimum Lot area provision and accordingly the clause 4.1.3 Manly DCP FSR variation provisions apply.

Clause 4.1.3.1 states that the extent of any exception to the LEP FSR development standard pursuant to clause 4.6 of the LEP is to be no greater than the achievable gross floor area for the lot indicated in Figure 30 of the DCP. We confirm that pursuant to Figure 30 the calculation of FSR is to be based on a site area of 750m² with an achievable gross floor area of 300m².

In this regard the 300m² of gross floor area proposed, representing an FSR of 0.4:1 (based on 750m²), is compliant with the maximum prescribed gross floor area of 300m² and as such complies with the DCP provision. Notwithstanding consideration must also be given to the objectives of the zone and the FSR development standard.

Clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied.

Zone and Zone Objectives

As previously indicated, the proposal is permissible in the zone and consistent with the zone objectives as outlined. There are no permissibility or zone objective impediments to the granting of approval to the proposed development.

Claim for Variation

It has been determined that the proposal has a gross floor area of 300m² representing a floor space ratio of 0.49:1. This represents a non-compliance of 56.8sqm or 23%.

Having regard to the stated objectives and pursuant to Clause 4.6(3)(a) it is considered that strict

compliance is both unreasonable and unnecessary for the following reasons:

- The relatively small site area, compared to surrounding properties, makes strict compliance difficult whilst realising the reasonable floor space needs of a contemporary dwelling on this particular site.
- Having regard to clause 4.1.3.1 Manly DCP FSR provisions the 300m² of gross floor area proposed, representing an FSR of 0.4:1 (based on 750m²), is compliant with the maximum prescribed gross floor area of 300m² and as such complies with the DCP provision. This is a relevant matter for consideration.
- The floor space has been appropriately distributed across the site to maintain a contextually appropriate relationship with adjoining development.
- The height, bulk, scale and floor space/ GFA proposed are entirely consistent with the built form characteristics established by adjoining development and development generally within the sites visual catchment.
- It has been determined that the floor space ratio proposed will not give rise to any unacceptable residential amenity impacts in terms of view loss, overshadowing, privacy or visual bulk.
- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development, by virtue of its height offensive, jarring or unsympathetic having regard to the built form characteristics of development within the sites visual catchment as depicted in the photomontage at Figure 4. In the recent 'Four2Five' judgement (Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation. In this regard, we have formed the considered opinion that there are sufficient environmental planning grounds to justify contravening the development standard including the appropriate distribution of floor space on this steeply sloping site, the small area of the site compared to surrounding properties, the compatible built form outcome achieved and the GFA established by surrounding development and development generally within the sites visual catchment. Under such circumstances approval would not be antipathetic to the public interest.

Conclusions

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the FSR of buildings standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that given the developments ability to comply with the zone and height of buildings standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such, we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of an FSR variation in this instance.

(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:

In this circumstance, it has been demonstrated by the applicant that compliance with the development standard would be unreasonable and unnecessary due to a design that in the context of the features of the site and surroundings contribute to providing a development that would have no unreasonable impact. In particular, the setbacks and step down with topography of each floor level on sloping land would both ensure a reasonable presentation in the street and a lack of amenity impact to adjoining proprietries through appropriate physical separation. As a result, the lack of impact and topographical nature of the site provide sufficient planning grounds to justify contravening the development standard.

(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 Secretary 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.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 600.7m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	East: 8m	9.3m	16.25%	No, see comments.
	West: 8m	10.5m	31.25%	No, see comments.
4.1.2.2 Number of Storeys	2	3	N/A	No, see comments.
4.1.2.3 Roof Height	Height: 2.5m	0.5m	N/A	Yes
	Parapet Height: 0.6m	0.5m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0.92m, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks	3.1m (East)	1.35m	N/A	No
	3.5m (West)	1m (dwelling) 0.3m (deck)	N/A	No

4.1.4.4 Rear Setbacks	8m	5.8m	N/A	No, see comments.
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (360.42m ²)	75.4% (453m ²)	N/A	Yes
	Open space above ground 25% of total open space	18.5% (84m ²)		
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (181.2m ²)	41.9% (190m ²)	N/A	No, subject to conditions.
4.1.5.3 Private Open Space	18m	90sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.2m	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	2.1m	N/A	No, see comments.
	1m curtilage/1.5m water side	0.3m/2.3m	N/A	No, see comments.
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

***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
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.1.1.1 Complementary Design and Visual Improvement	Yes	Yes
3.1.1.2 Front Fences and Gates	Yes	Yes
3.1.1.3 Roofs and Dormer Windows	Yes	Yes
3.1.1.4 Garages, Carports and Hardstand Areas	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.2.2 Requirements for other DAs	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.2.1 Wall Height	No	Yes
4.1.2.2 Number of Storeys	No	Yes
4.1.2.3 Roof Height	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.4.1 Street Front setbacks	Yes	Yes
4.1.4.2 Side setbacks and secondary street frontages	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.4.4 Rear Setbacks	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements	No	Yes
4.1.5.3 Private Open Space	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.1.9.1 Height above ground	No	Yes
4.1.9.2 Location and Setbacks	No	Yes

Detailed Assessment

4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

The proposal is inconsistent with the controls for wall height and number of storeys under the Manly DCP 2013. Under Clause 4.1.2 of the Manly DCP 2013, it is stated that the controls of Clause 4.3 for Height of buildings under the Manly LEP are particularly applicable in this case.

(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 subject site is located on a slope below Seaforth Crescent, on Laura Street and with a rear boundary adjacent to Laura Lane. This slope provides a situation in which the presentation of bulk to both Seaforth Crescent and Laura Street is minimised as the proposed dwelling steps down the slope. In addition, the dwelling would be located below a significant section of vegetation and rock features on Laura Street so that the presentation of bulk would be further minimised. The visual presentation of bulk will be greater from Laura Lane and the foreshore, however this is consistent with dwellings on this slope in the area and as such the proposed height is reasonable.

b) to control the bulk and scale of buildings,

Comment:

The proposed dwelling will step down the slope so that the height non-compliance only occurs at the rear of each section of the building. This means the front of the dwelling at the entrance (garage floor level) is compliant and the front section of the upper floor plan is also compliant with building height. This means that despite these rear sections of the building having a non-compliance with the building height, the building generally steps down the site to result in an appropriate bulk and scale given the context of the area and lack of unreasonable amenity impact.

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:

As a result of the location of the proposed dwelling and lack of adjacent areas dwellings and residential sites for obtaining views (due to the unusual subdivision pattern), the proposed dwelling would not have any unreasonable impact on views. The proposed stepping down of the dwelling which is generally with the slope of the site also ensure the height of the proposal would not have an unreasonable impact on 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:

As a result of the varied surrounding subdivision pattern and the resulting reasonable physical separation to the south, the proposal is consistent with the controls for sunlight access and overshadowing under the Manly DCP. This also provides a situation in which there is appropriate solar access for public and private open spaces.

- 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:

The proposal is adjacent to an area zoned for public recreation. The proposed dwelling would not have any unreasonable impact on this area due to reasonable setbacks and an adequate provision of bulk across the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP 2013 (inclusive of Part 3) 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.

4.1.2.1 Wall Height

See comments under Clause 4.1.2 (Height of buildings)

4.1.2.2 Number of Storeys

See comments under Clause 4.1.2 (Height of buildings)

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

Although the proposal is inconsistent with the numerical controls for setbacks under the Manly DCP, it is consistent with the objectives of the clause as follows:

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

Comment:

The subject site is located on a slope below Seaforth Crescent, on Laura Street and with a rear boundary adjacent to Laura Lane. As a result of the proposed step down of the dwelling to minimise bulk and the reasonable landscaped area (subject to conditions) to the rear of the dwelling, the proposal would present effectively to each of these streets.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The orientation of the private open space areas to the rear, compliance with controls for Sunlight and access and overshadowing, the appropriate distribution of bulk across the site responding with the topography, provides a development that would not have an unreasonable impact on any amenity. In addition, there are privacy screens and planter boxes provided to the west which provide an appropriate compromise between minimisation bulk and provision of appropriate privacy.

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

Comment:

The proposed dwelling has a similar alignment (at the rear and front) to the neighbouring dwelling at 31 Seaforth Crescent and generally steps down with the slope of the site. This ensures that the siting of the development is appropriate in consideration of the bulk proposed.

Objective 4) To enhance and maintain natural features by:

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

Comment:

There are no proposed changes to natural features or open space. The proposed non-complaint setbacks do not relate to the maintenance or enhancement of natural features on site in this circumstance due to the works being within the existing building envelope.

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

Not applicable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP 2013 (inclusive of Part 3) 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.

4.1.4.2 Side setbacks and secondary street frontages

See comments under objectives for Clause 4.1.4- Setbacks.

4.1.4.4 Rear Setbacks

See comments under objectives for Clause 4.1.4- Setbacks.

4.1.5.1 Minimum Residential Total Open Space Requirements

4.1.9 Swimming Pools, Spas and Water Features

The proposal is inconsistent with the numerical controls for setbacks to swimming pools and height of swimming pools. However, the proposal is consistent with

Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;

Comment:

The proposed pool has compliant side setbacks and has reasonable physical separation from dwellings at the rear, contributed to by Laura Lane. This ensures that there would be reasonable levels distances between the swimming pool and all surrounding dwellings to ensure an adequate outcome for both visual and aural privacy.

There is a part of the concourse associated with the swimming pool that is non compliant with the control for side setback. However, this section of non-compliance is primarily for access (being adjacent to stair) and has reasonable physical separation to private open space at the adjacent dwelling. As such, this non-compliance would not result in any unreasonable privacy impact.

Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;

Comment:

The proposed swimming pool is located to the rear of the site and facing Laura Lane. As a result of the subdivision pattern, Laura Lane is characterised by the presentation of the rear setbacks for sites to the north. The location of the proposed swimming pool having a similar alignment to the adjacent swimming pool is therefore an appropriate outcome.

Objective 3) To integrate landscaping; and

Objective 4) To become an emergency water resource in bush fire prone areas.

Comment:

Subject to conditions, the proposal will provide appropriate landscaping. The swimming pool has the potential to become an emergency water resource.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP 2013 (inclusive of Part 3) 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.

4.1.9.1 Height above ground

See objectives addressed under Clause 4.1.9 Swimming Pools, Spas and Water

4.1.9.2 Location and Setbacks

See objectives addressed under Clause 4.1.9 Swimming Pools, Spas and Water

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

Manly Section 94 Development Contributions Plan

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

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

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

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

It is considered that the proposed development satisfies the appropriate controls and that all processes

and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2017/1352 for Construction of a new dwelling house on land at Lot 1 DP 120934, 9 Laura Street, SEAFORTH, 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
DA203 - Rev A - Site Plan	22.12.2017	Robert Ursino Design
DA301- Rev A - Garage Floor Plan	22.12.2017	Robert Ursino Design
DA302- Rev A- Upper Floor Plan	22.12.2017	Robert Ursino Design
DA303- Rev A- Middle Floor Plan	22.12.2017	Robert Ursino Design
DA304- Rev A- Lower Floor Plan	22.12.2017	Robert Ursino Design
DA305- Rev A- Rear Yard Plan	22.12.2017	Robert Ursino Design
DA306- Rev A- Roof Plan	22.12.2017	Robert Ursino Design
DA401- Rev A- Sections 01	22.12.2017	Robert Ursino Design
DA402- Rev A- Sections 02	22.12.2017	Robert Ursino Design
DA501- Rev A- North Elevation and Rear fence Elevation	22.12.2017	Robert Ursino Design
DA502- Rev A- South Elevation	22.12.2017	Robert Ursino Design
DA503- Rev A- East Elevation	22.12.2017	Robert Ursino Design
DA504- Rev A- West Elevation	22.12.2017	Robert Ursino Design

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

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. 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.

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

5. **On-site Stormwater Detention Compliance Certification**

Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Manly Specification for On-site Stormwater Management 2003 and the concept drawing by ML Civil, Job number 17.058 SW 1 dated 24/07/2017.

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

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

6. **Landscaping 1**

Details must be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate indicating the proposed method of water proofing and drainage of the concrete slabs over the proposed garage which landscaping is being provided. A planting design shall be provided to indicate species to be used, and additionally an indicative maintenance program is to be demonstrated to ensure maintenance for the life of the development.

Reason: To ensure the appropriate type of water proofing is carried out and descriptive information about drainage is provided.
(DACLACPC1)

7. **Stormwater Management 2**

Water quality is not to be reduced from pre-development conditions and water quantity levels are not to be increased from pre-development levels and this is to be demonstrated by a suitably qualified engineer. Evidence must be submitted to Council for assessment prior to issuing of the construction certificate.

Reason: To ensure that the generation of additional stormwater discharge from the site due to the substantial increase in impervious area does not adversely impact receiving waters.

8. **Stormwater Management 1**

Stormwater shall be disposed of in accordance with Council's Policy. The stormwater management plan is to be implemented to ensure that there is no increase in stormwater pollutant loads arising from the approved development. Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to issue of the Construction Certificate.

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

9. **Swimming Pools**

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

Reason: To ensure compliance with legislation and Australian Standards and to protect public health, amenity and to ensure the protection and preservation of receiving waters. (DACNECPCC4)

10. **Waste Management Plan**

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. (DACPLCPCC2)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

11. **ANS01 - Native fauna survey**

Before any vegetation/materials/debris stockpiles are removed, a pre-clearance survey for native fauna is required. Clearing may only proceed if this survey concludes that no native fauna are present within the area to be cleared. All clearing must initially be carried out with hand tools to identify whether native fauna are sheltering within the area to be cleared (e.g. at the base of vegetation or under deep litter).

Reason: To prevent direct impacts to native fauna in accordance with objectives of Clause 6.5 of the Manly LEP 2013. (DACNEDPC1)

12. **Installation and Maintenance of Sediment and Erosion Control**

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site. (DACNEDPC1)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

13. **Stockpiling materials**

During construction, all material associated with works is to be contained at source, covered and

must be within the construction area. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period (DACNEEDW1)

14. **Pollution Control 1**

All stockpiles, materials, waste and slurry associated with works (including excavated material) is to be contained at source within the construction area and enclosed in waterproof covering and/or sediment and erosion control while not in use. All waste/debris is to be removed off site and disposed of as frequently as required in accordance to local regulations.

Reason: To protect the surrounding environment, and ensure that pollutants and building associated waste do not leave the construction site. (DACNEEDW2)

15. **Geotechnical Issues**

All conditions outlined in Geotechnical Assessment For Helen & Hatem Yavuz, 9 Laura Street, Seaforth, New South Wales Report No: 17/3850 Project No: 21815/9095C December 2017, are to be complied with and adhered to throughout development.

Reason: To ensure (insert excavation, foundations, footings, etc.) is undertaken in an appropriate manner and structurally sound.

16. **Pollution Control 2**

Any excess materials such as cleaning paintbrushes, lacquers, and any water from cleaning tools must not enter the stormwater network and/or receiving waterways.

Reason: To ensure that building associated chemicals and pollutants don't enter the surrounding environment.

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

17. **Landscaping 2**

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. Additionally, the recommendations of the Arborist Report shall be complied with including replacement trees as listed in 4(e) of the Arborist Report

Reason: This is to ensure the landscaping is planted in accordance with the drawing and maintained appropriately. (DACLAFOC1)

18. **Geotechnical Issues 2**

Following construction activities provide Council with a geotechnical report that has investigated the stability of the site and provided an assessment of any new landslip hazards prior to the issue of an occupation certificate.

Reason: To ensure works are undertaken in an appropriate manner (DACNEFPOC1).

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

19. **ANS02 - Contact with registered wildlife rescue and rehabilitation organisation**

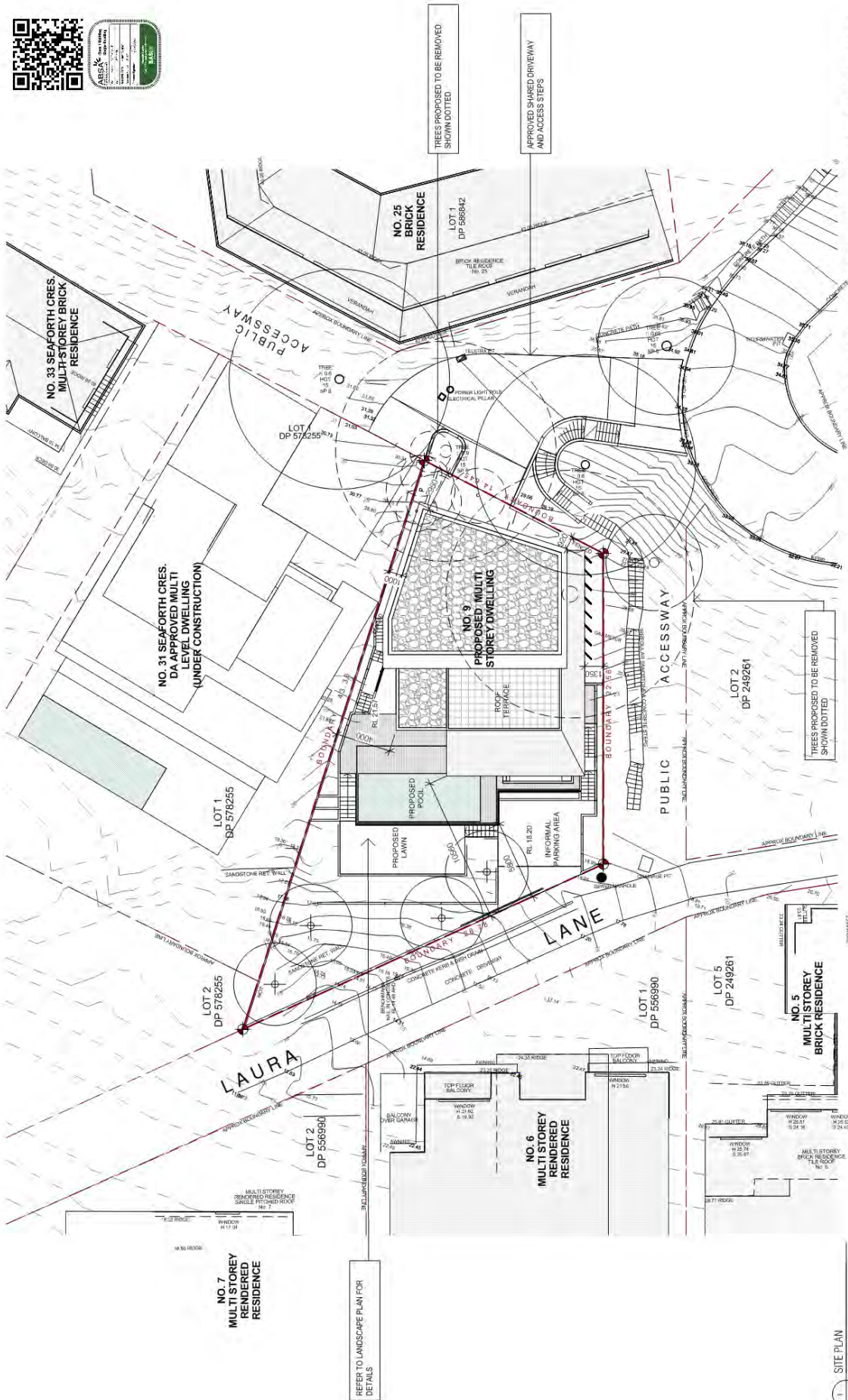
If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity associated with the development. (DACNEGOG1)

20. **Stormwater Pollution Control Pits**

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

Reason: To ensure appropriate provision is made for the treatment and management of storm water generated by the development for the protection and preservation of the aquatic habitats and biota within receiving waters. (DACNEGOG1)



FOR DEVELOPMENT APPLICATION - NOT FOR CONSTRUCTION

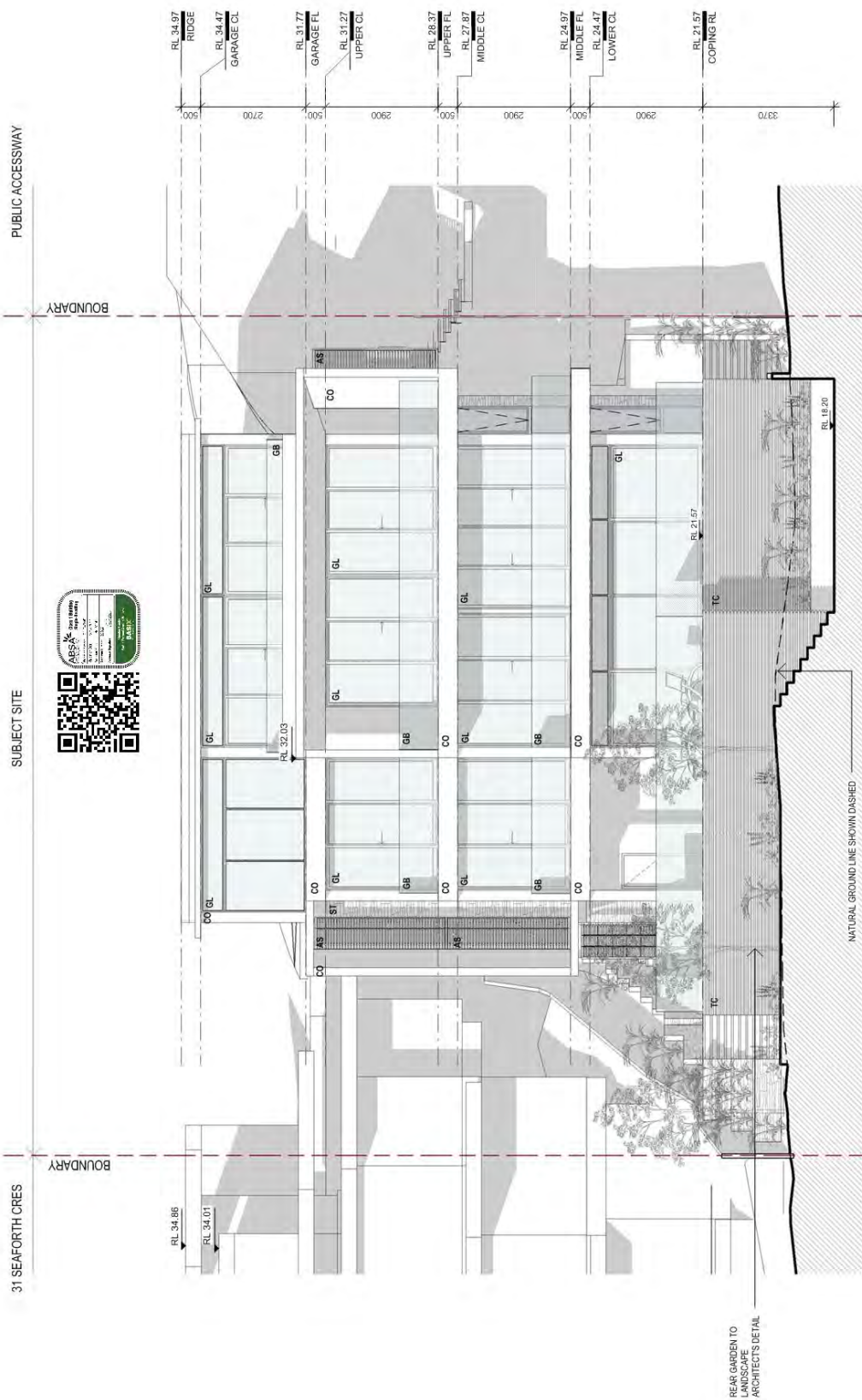
DRAWING TITLE		DATE	
SITE PLAN		22.12.2017	
DRAWN BY		RU	
CHECKED BY		RU	
PROJECT NO.		1704	
DRAWING NO.		DA203	

**ROBERT
URSINO
DESIGN**

LEGEND & NOTES	
(+)	PROPOSED NEW TREE
(O)	EXISTING TREE TO BE RETAINED
(O)	EXISTING TREE TO BE REMOVED

REVISION	DESCRIPTION	DATE
A	FOR DEVELOPMENT APPLICATION - NOT FOR CONSTRUCTION	22.12.2017

[illegible]



1 SOUTH ELEVATION
1:100

[illegible]

**ROBERT
URSINO
DESIGN**



FOR DEVELOPMENT APPLICATION - NOT FOR CONSTRUCTION

[illegible]

**ROBERT
URSINO
DESIGN**



FOR DEVELOPMENT APPLICATION - NOT FOR CONSTRUCTION

[illegible]

**ROBERT
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GENERAL NOTES

- ALL DIMENSIONS TO BE INDICATED BY DIMENSION LINES TO CORRESPONDENCE OF THE DRAWING.
- ALL REINFORCEMENT DIMENSIONS ARE SUBJECT TO MODIFICATION BY THE REINFORCEMENT MANUFACTURER, WHO IS NOT RESPONSIBLE FOR THE BUILDING. THE DIMENSIONS SHOWN ARE ONLY A GUIDE TO SCALE FOR PLACING.
- ALL WORKS TO COMPLY WITH THE RELEVANT AUSTRALIAN STANDARDS.
- ALL WORKS ARE TO BE CARRIED OUT IN ACCORDANCE WITH THE REQUIREMENTS OF THE BUILDING CODE OF AUSTRALIA.
- ALL DRAWINGS ARE DESIGN ONLY AND NOT FOR CONSTRUCTION.

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CLIENT YANUZ	PROJECT NO 1100	DATE 11/04	WEST ELEVATION
ADDRESS 91 LAURA STREET, SEAFORTH NSW 2082	DESIGNED BY RU	DESIGNED BY RU	DATE 22.12.2017
	DRAWN BY RU	CHECKED BY 17.04	DATE 17.04
			PROJECT NO DA504

ITEM 3.2	DA2017/1219 - 8A ASHBURNER STREET, MANLY - ALTERATIONS AND ADDITIONS TO THE EXISTING BUILDING
REPORTING OFFICER	RODNEY PIGGOTT
TRIM FILE REF	2018/222373
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. DA2017/1219 for alterations and additions to the existing building at Lot 1 DP 1008804, 8A Ashburner Street, Manly subject to the conditions and for the reasons set out in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2017/1219
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 1 DP 1008804, 8 A Ashburner Street MANLY NSW 2095
Proposed Development:	Alterations and additions to the existing building
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Richard Nicholas Swift Alison Leah Swift
Applicant:	Site Specific Designs
Application lodged:	14/12/2017
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	17/01/2018 to 02/02/2018
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	Approval
Estimated Cost of Works:	\$ 44,700.00

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

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.2 Heritage Considerations
 Manly Development Control Plan - 3.3.1 Landscaping Design
 Manly Development Control Plan - 3.3.2 Preservation of Trees or Bushland Vegetation
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.7 Stormwater Management
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.10 Fencing
 Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area
 Manly Development Control Plan - 5.4.2 Threatened Species and Critical Habitat Lands

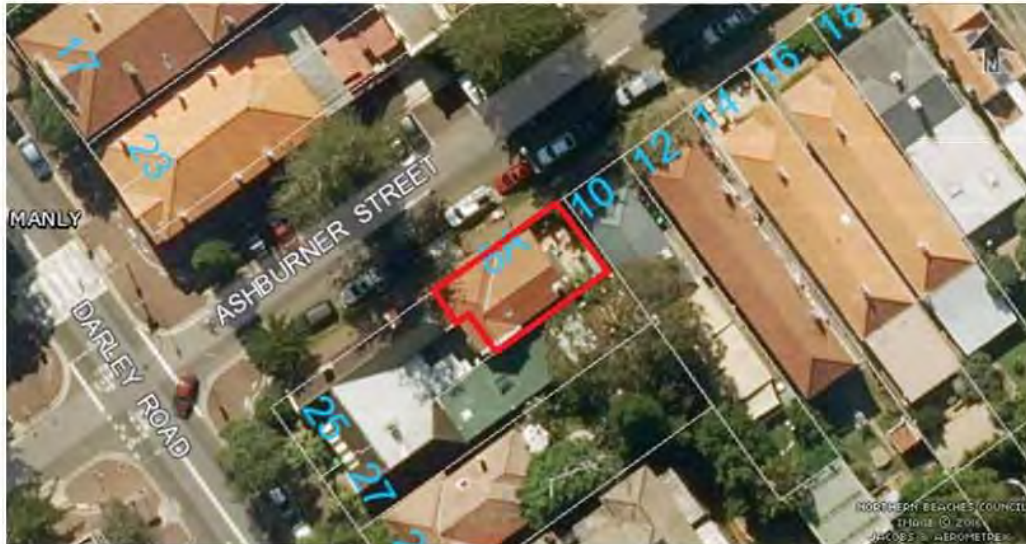
SITE DESCRIPTION

Property Description:	Lot 1 DP 1008804 , 8 A Ashburner Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one allotment located on the south-eastern side of Ashburner Street>.</p> <p>The site is irregular in shape with a frontage of 15.16m along Ashburner Street and a depth of 8.62m. The site has a surveyed area of 125.1m².</p> <p>The site is located within the R1 General Residential zone.</p> <p>The site is generally flat.</p> <p>The site is generally impervious and contains minimal vegetation. The site is located on land within an Assessment of Significance Area for Bandicoots.</p> <p>Detailed Description of Adjoining/Surrounding Development</p>



Adjoining and surrounding development includes a range of developments including detached and semi-detached dwelling houses, dual occupancies, residential flat buildings and mixed use developments.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes works as follows:

Ground Floor:

- Conversion of existing garage to a dining room
- New mudroom at rear
- Changes to windows and doors

First Floor:

- Internal alterations

External:

- New 1.8m high sliding gate and front fence incorporating landscaping
- New driveway and hardstand car parking area over existing paved courtyard
- Extension of existing front entry deck and new adjustable sunshade



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	Mainly 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> <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 clause is not relevant to this application.</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 clause is not relevant to this application.</p>



Section 79C 'Matters for Consideration'	Comments
	<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 of consent.</p> <p>Clause 143A 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>
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) The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) 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 un/suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" 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:
Heather Prince	

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

- No display of DA notice and duration of notification period
- Streetscape and heritage impact



- Unauthorised works
- Privacy impacts of new doors and gates
- Reinstatement of kerb over existing driveway

The matters raised within the submissions are addressed as follows:

- Notification
Comment:
Following the initial notification period, DA2017/1219 was re-notified from 17 January 2018 to 2 February 2018
- Streetscape and heritage
Comment:
The subject site is not a listed heritage item nor is it located within a conservation area. The proposed works were referred to Council's Heritage Officer for comment as part of the Pre-lodgement process with no objections raised. The proposed partially transparent front fence and the new doors to replace the existing garage door are considered to improve the existing appearance of the dwelling from the street.
- Unauthorised works
Comment:
The potential unauthorised works undertaken on the subject site are not relevant to this application and should be directed to Council's Building Control department.
- Privacy
Comment:
The proposed french doors to replace the existing garage door contain small highlight windows with a sill height of 1.68m. The proposed gates are to a driveway/car parking area rather than any private open space and physically separated from No. 23 Darley Road. Therefore, the proposed works are considered to have no unreasonable privacy impacts in relation to No. 23 Darley Road.
- Existing driveway
Comment:
A condition is included in the consent requiring that the kerb and footpath be reinstated over the existing driveway

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	MEMORANDUM MEMO TO: LODGEMENT AND QUALITY ASSURANCE (SOUTH) SUBJECT: DA2017/1219 – 8A ASHBURNER STREET, MANLY – BIODIVERSITY ASSESSMENT FROM: KRISTIE KING, ENVIRONMENTAL OFFICER (SOUTH) DATE: 20 FEBRUARY 2018

DA2017/1219

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Internal Referral Body	Comments
	<p>1. Proposed Works Proposed works include:</p> <ul style="list-style-type: none"> • Construction of new car hardstand area over existing development footprint; • Construction of a new gate and fence with associated landscaping; • Construction of a new mudroom at the rear of the lot; • Construction of a new driveway to service new car space. <p>2. Relevant LEP Provisions The site is located on the Manly Local Environment Plan 2013 (MLEP 2013) Terrestrial Biodiversity Map and thus requires an assessment of all points of consideration in Clause 6.5(3) and (4) of the MLEP 2013. This assessment has been undertaken by Council's Environmental Officer.</p> <p>3. Relevant DCP Provisions The subject site is within the area indicated in Schedule 1 - Map D of the Manly Council DCP 2013, which indicates areas requiring an Assessment of Significance (AoS) for the endangered population of Long-nosed Bandicoots (<i>Perameles nasuta</i>) at North Head. This assessment has been undertaken by Council's Environmental Officer.</p> <p>4. Environmental Officer Assessment and Determination 4.1 Assessment of Significance for Long-nosed Bandicoots</p> <p><u>a) in the case of a threatened species, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction;</u></p> <p>As the modification will not result in a reduction in soft open space/potential habitat additional to the original development, it is not considered to further disturb any aspects of the lifecycle, reproductive success or genetic exchange mechanisms of the endangered population of Long-nosed Bandicoots at North Head. It is considered that construction-related impacts can be mitigated through imposition of the recommended conditions particularly through daily checks of any external storage areas (for materials or wastes) to ensure native fauna is not sheltering within stockpiles prior to stockpile removal.</p> <p><u>b) in the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity:</u></p> <p><u>(i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction; or</u></p> <p><u>(ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction;</u></p>



Internal Referral Body	Comments
	<p>N/A – this assessment of significance is not relevant to an endangered ecological community or critically endangered ecological community.</p> <p><u>(d) in relation to the habitat of a threatened species or ecological community:</u></p> <p><u>(i) the extent to which habitat is likely to be removed or modified as a result of the development or activity, and</u></p> <p><u>(ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the development or activity;</u></p> <p><u>(iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species, population or ecological community in the locality;</u></p> <p>The Long-nosed Bandicoot is often recorded in disturbed urban environments. The proposed modification will not result in a further loss of soft open space, therefore there will be no additional overall long term reduction, fragmentation or isolation of accessible habitat as a result of this proposal.</p> <p><u>(e) whether the proposed development or activity is likely to have an adverse effect on any declared area of outstanding biodiversity value (either directly or indirectly);</u></p> <p>N/A – The proposed works areas are not located within any AOBV.</p> <p><u>f) whether the proposed development or activity is or is part of a key threatening process or is likely to increase the impact of a key threatening process.</u></p> <p>The proposed modification will not contribute to any key threatening processes and, subject to conditions, will not result in additional disturbance, removal, isolation, fragmentation or modification of any accessible bandicoot habitat and will not significantly impact on the lifecycle or viability of the population in the short or long term.</p> <p>4.2 Determination</p> <p>It is concluded that subject to the recommended conditions of consent, the modification can be carried out without a significant impact on threatened species in accordance with the Manly DCP 2013 and Biodiversity Conservation Act 2016, or terrestrial biodiversity in accordance with Clause 6.5 (3) and (4) of the Manly LEP 2013.</p>
NECC (Development Engineering)	Development Engineer has no objection to the application subject to the following conditions of consent.

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.9m	N/A	Yes
Floor Space Ratio	0.6:1 (75.06sqm)	1.05:1 (131.9sqm)	75.7%	No (See Clause 4.6)

Compliance Assessment

Clause	Compliance with Requirements
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size OR Clause 4.1AA Minimum subdivision lot size for community title schemes development standard has taken into consideration the questions established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46.



Requirement:	0.6:1 (75.06m ²)
Proposed:	1.05:1 (131.9m 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	75.7%

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 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 MLEP 2013 are:

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

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

Comment:

The additional bulk is limited to the small ground floor addition at the rear of the dwelling and is not visible from the street.

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 works do not result in unreasonable additional bulk and will not obscure any important landscape or townscape features.

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

Comment:

The proposed addition is minor and will not unreasonably impact the existing character or landscape or the area.



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

Comment:

The proposed addition will not unreasonably impact the use or enjoyment of any adjoining land.

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:

N/A

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 <insert zone> zone.

The underlying objectives of the R2 Low Density Residential zone:

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

Comment:

The proposed development retains the existing residential use.

It is considered that the development satisfies this objective.

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

Comment:

The proposed development retains the existing housing type and density.

It is considered that the development satisfies this objective.

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

Comment:

N/A

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 results in an increase to the building footprint of approximately 5m² at the rear of the site, with a consistent setback to existing dwelling.

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

Comment:

The proposed variation significantly increases the usability and practicality of the existing dwelling by providing increased gross floor area within the existing building envelope, with only a minor addition at ground level at the rear.

(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 justification for the proposed variation:

"The existing house is to remain unchanged and is consistent with the federation style of se

The setbacks to the neighbours remains unchanged to all boundaries as the proposed new

The minimum setback to the neighbours remains unchanged, with the new Ground Level M

The proposal adds a small 5.2m² to the ground floor footprint over an existing paved pathwa
Ratio as we believe it unnecessary and unreasonable due to the undersize Lot Area of 125.



It has been shown that the bulk and scale of development is consistent with the existing and

(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 adequately addresses the matters required 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 R1 General 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 not be assumed for exceptions to development standards greater than 10% under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. As such, the application will be referred to the Local Planning Panel.

6.1 Acid sulfate soils

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land is required to be assessed to determine if any impact will occur.



No significant excavation is proposed as part of the application.

6.4 Stormwater management

Satisfactory subject to conditions.

6.9 Foreshore scenic protection area

The proposed works are located at ground level and will have no unreasonable impacts in relation to visual aesthetic amenity or views to and from Sydney Harbour.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 125.1m ²	Requirement	Proposed	Complies
4.1.2.1 Wall Height	Northeastern side: 6.5m	6.15m	Yes
4.1.2.2 Number of Storeys	2	2	Yes
4.1.2.3 Roof Height	Height: 2.5m	2.35m	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Dwelling - 0m	Existing
		Entry Deck - 0m	Yes (Streetscape)
4.1.4.2 Side Setbacks and Secondary Street Frontages	Northeastern side: 2.05m	4m	Yes
4.1.4.4 Rear Setbacks	8m	0m	No (See comment)
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 55% of site area (68.8m ²)	12.15% (15.2m ²)	No (See comment)
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (4.9m ²)	12.5% (1.9m ²)	No (See comment)
4.1.5.3 Private Open Space	12m ²	15.2m ²	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	3.6m	Yes
Schedule 3 Parking and Access	2 Spaces	1 space	No (See comment)

***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
3.1 Streetscapes and Townscapes	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	No	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.2.1 Wall Height	Yes	Yes
4.1.2.2 Number of Storeys	Yes	Yes
4.1.2.3 Roof Height	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.4.1 Street Front setbacks	No	Yes
4.1.4.2 Side setbacks and secondary street frontages	Yes	Yes
4.1.4.3 Variations to Side Setback in Residential Density Areas D3 to D9 (see paragraph 4.1.1 of this plan)	No	Yes
4.1.4.4 Rear Setbacks	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements	No	Yes
4.1.5.2 Landscaped Area	No	Yes
4.1.5.3 Private Open Space	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.2 Heritage Considerations

In relation to the Pre-lodgement plans for this development, Council's Heritage Officer comment as follows:

The site of proposed development is not a listed heritage item in its own right, however, it is located in the vicinity of two heritage items, including:



- Listed stone kerbs, and
- Listed trees in streetscape

Given the nature of the proposal and the separation between sites, and given the nature of items, the impact on heritage values is assessed as acceptable.

Based on the above, I have no objections to this proposal from heritage perspective.

3.3.1 Landscaping Design

The subject site has no existing landscaped area or vegetation. The proposal includes planting as recommended in the Pre-lodgement advice relating to the development and is considered to be sufficient in this case.

3.3.2 Preservation of Trees or Bushland Vegetation

There are no existing trees or vegetation on the site.

3.4.1 Sunlight Access and Overshadowing

The proposed mudroom is located at ground level on the southern side of the existing dwelling and will have negligible impact on overshadowing, causing only minor additional overshadowing of No. 27 Darley Road at 12pm.

3.4.2 Privacy and Security

No windows are proposed on the first floor and the ground floor works will result in no unreasonable privacy impacts.

3.7 Stormwater Management

Satisfactory subject to conditions.

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

Description of non-compliance

The proposed front and rear setbacks are non-compliant with the numerical requirements of this Clause.

Merit consideration:

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

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

Comment:

The proposal includes an extension and new sun shade to the front entry deck. Clause 4.1.4.1 (d) allows unenclosed balconies to project into the front setback where there are no adverse impacts on the streetscape or adjoining properties. In this case, the deck and sun shade will be largely obscured from the



street frontage by the proposed front fence and will not unreasonably impact the amenity of the adjoining properties.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

All proposed external works are at ground level and will have no unreasonable impact in relation to privacy, sunlight access, views, streetscape character or traffic conditions.

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

Comment:

The proposed rear mudroom is a single-storey structure and the set back is consistent with the existing rear wall.

Objective 4) To enhance and maintain natural features by:

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

Comment:

There is no existing landscaped area on the subject site and planting is included in the application as per the Pre-lodgement advice.

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

Comment:

N/A

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.



4.1.5 Open Space and Landscaping

Description of non-compliance

The proposed development includes non-compliant total open space and landscaped areas.

Merit consideration:

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

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

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

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

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

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

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

Comment:

The existing total open space area is non-compliant and there is no existing landscaped area or vegetation on the site. The proposal includes planting along the front and eastern side boundaries consistent with the Pre-lodgement advice.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

Merit consideration:

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

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



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

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.

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.

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

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.

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

Comment:

The proposed hard stand car parking area adjacent to the front boundary is consistent with the car parking characteristics of the streetscape. The car parking will also be somewhat obscured by the proposed front fence and planting.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

4.1.10 Fencing

The proposed front fence and gate is non-compliant with the maximum height allowed under Clauses 4.1.10 and 4.1.10.1. However, the fence is transparent above 1m and incorporates soft landscaping across the fence and driveway trellis. Considering the context of the site and location of the limited open space area, the proposed 1.8m fence is considered to be appropriate in this case.

5.4.1 Foreshore Scenic Protection Area

The proposed development will have no unreasonable impact on visual aesthetic amenity or views to and from Sydney Harbour.

5.4.2 Threatened Species and Critical Habitat Lands

Council's Environmental Planner raised no objections to the proposed development, subject to recommended conditions of consent.

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

Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2017/1219 for Alterations and additions to the existing building on land at Lot 1 DP 1008804, 8 A Ashburner Street, MANLY, subject to the conditions printed below:



DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance (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
DA02 - Grond Floor	7 December 2017	Sheralee Hogan
DA03 - First Floor	7 December 2017	Sheralee Hogan
DA04 - Sections	7 December 2017	Sheralee Hogan
DA05 - Elevations - North East & North West	7 December 2017	Sheralee Hogan
DA06 - Elevations - South East & South West	7 December 2017	Sheralee Hogan

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
DA08 - Stormwater & Landscape Plan	7 December 2017	Sheralee Hogan

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. Security Bond

A bond (determined from cost of works) of \$1,000 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

5. **Vehicular Crossing/Driveway**

The applicant must complete an application form and pay applicable fees for an application to Council for the construction of a vehicular crossing.

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.

The provision of a vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/2 NH and specifications.

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 sites.

6. **No Bright Lighting – Bandicoot Habitat**

No bright lighting or motion detectors are to be installed to illuminate the lawn or garden areas. A modest amount of low lighting may be used for safety purposes only.

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

Reason: Bright lighting disturbs Long-nosed Bandicoots and disrupts normal Bandicoot foraging, sheltering and nesting activity.

7. **Blank condition for prior to construction certificate - replace this heading with your condition heading**

The new driveway gate is to be designed to be raised at least 150mm high from the ground. Plans are to be amended prior to issue of the Construction Certificate.

Reason: To maintain bandicoot access to potential habitat across the endangered population area. (DACNECPCC2)

8. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are 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)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

9. **Pre-Clearance Survey**

Before any vegetation/materials/debris stockpiles are removed, a pre-clearance survey for native fauna is required. Clearing may only proceed if this survey concludes that no native fauna are present within the area to be cleared. All clearing must initially be carried out with hand tools to identify whether native fauna are sheltering within the area to be cleared (e.g. at the base of vegetation or under deep litter). Machinery may only be used once it has been confirmed that no native fauna are sheltering within the area to be cleared.

Reason: To prevent direct impacts to threatened native fauna in accordance with objectives of Clause 6.5 of the Manly LEP 2013 and the Biodiversity Conservation Act 2016. (DACNEDPC1)

10. **Site Induction Required – Penguin and Bandicoot Habitat**

All workers, including site inspectors and sub-contractors, are to be made aware of the potential presence of relevant threatened species and endangered ecological communities through a site induction prior to commencement of works. The site induction is to include information about their conservation significance, potential activities on-site, means of identification and the measures to be implemented for their protection. A confirmation of induction is to be signed by every worker and the site manager.

Evidence of the site induction is to be documented and provided to the Principal Certifying Authority.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. **Vehicle Crossings**

The provision of a vehicle crossing metres 3 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)

12. **Long-nosed Bandicoot on site**

If a Long-nosed Bandicoot enters the worksite or is found during a survey of holes/stockpiles, works must cease until the bandicoot has safely vacated the worksite. Any injured or dead Long-nosed Bandicoots found within the worksite must be reported to the National Parks & Wildlife Service (NPWS) or Northern Beaches Council on the following phone numbers:

- National Parks & Wildlife Service – Duty Officer (9457 9577); or
- Northern Beaches Council – Bushland & Biodiversity Team (South) (9976 1500).

Reason: To ensure that injured animals receive expert care so that they can be returned to the endangered population where possible. (DACNEEDW1)

13. **Native wildlife injury or death**

If construction activity associated with this development results in injury or death of a native



mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity. (DACNEEDW2)

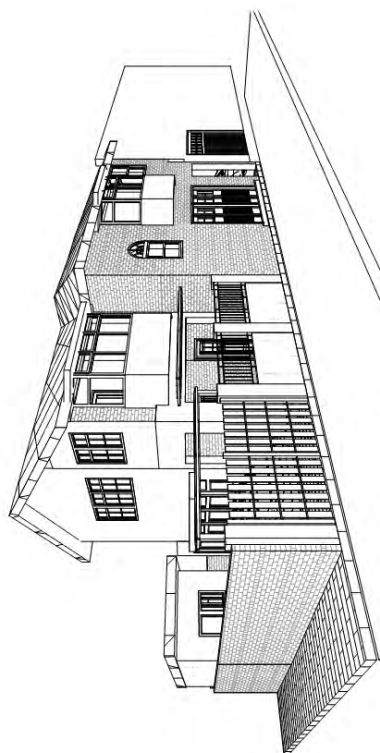
**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE**

14. Reinstatement of Kerb

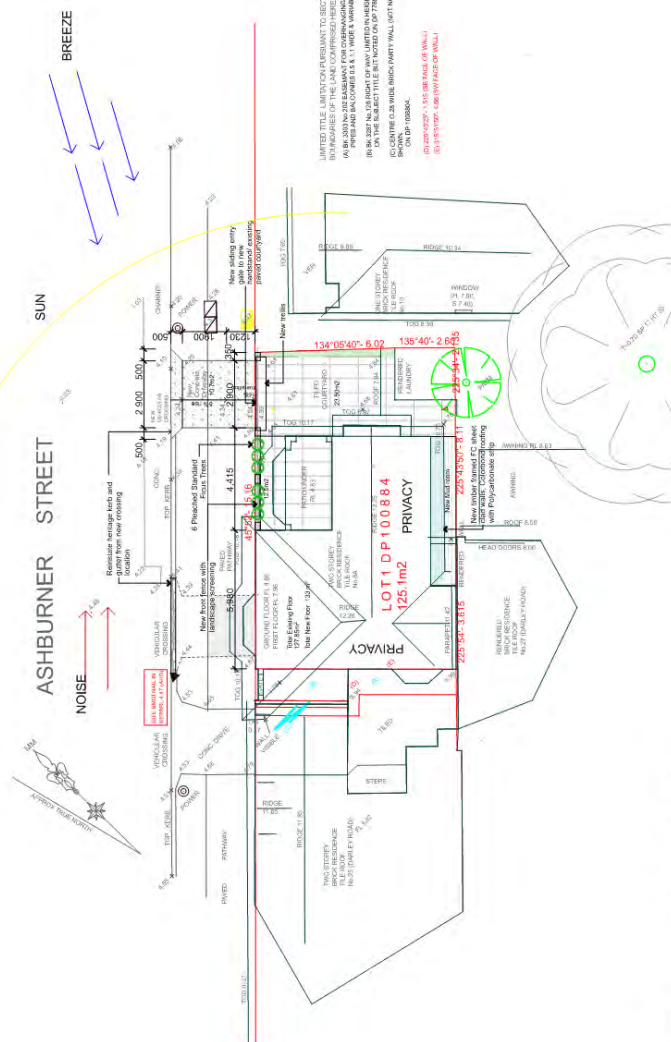
All redundant laybacks and vehicular crossings shall be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

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

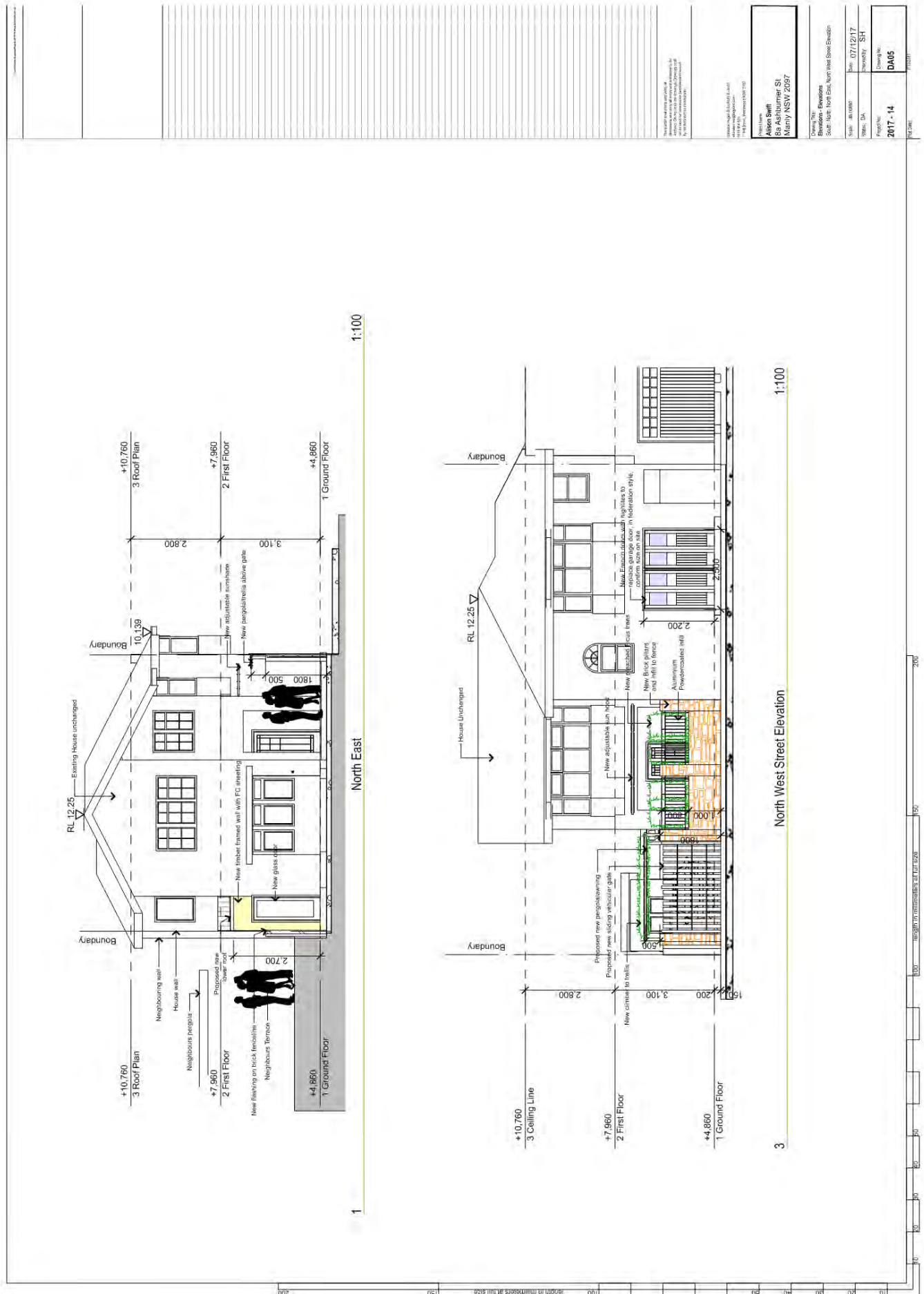


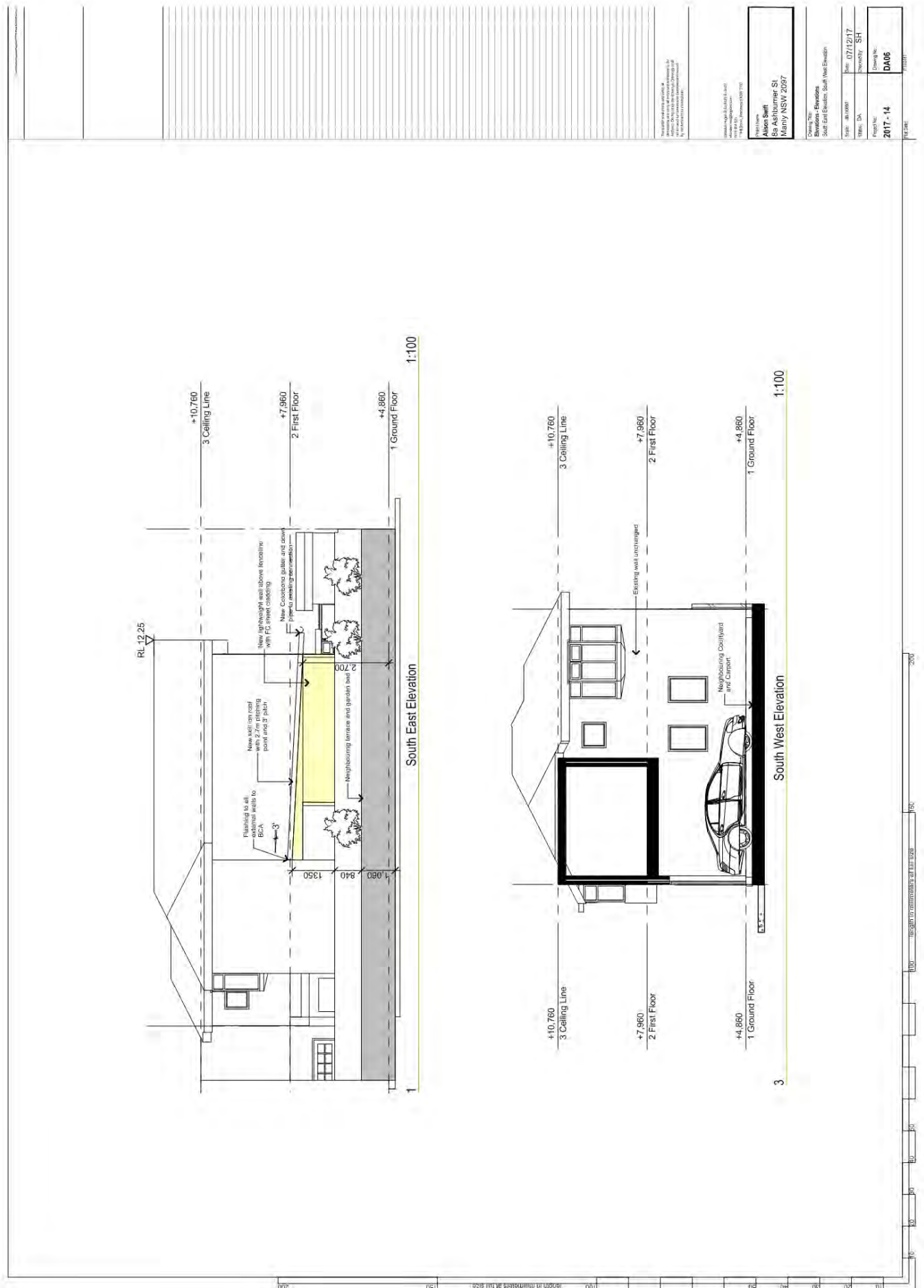
Streetview



Site and Roof Plan
1:200

Drawing Title: Plans - Site and Roof Plan Streetview, GoogleEarth, Street, Site and Roof Plan	Date: 07/12/17 Drawn By: SH	Drawing No.: 2017 - 14 DA01
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ITEM 3.3	DA2017/1312 - 40 AUGUSTA ROAD, FAIRLIGHT - ALTERATIONS AND ADDITIONS TO THE EXISTING SEMI DETACHED DWELLING
REPORTING OFFICER	RODNEY PIGGOTT
TRIM FILE REF	2018/222350
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. DA2017/1312 for alterations and additions to the existing semi detached dwelling at Lot 112 DP 616175, 40 Augusta Road, Fairlight subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2017/1312
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 112 DP 616175, 40 Augusta Road FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to the existing semi detached dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Daniel John Brabant Charlotte India Brabant
Applicant:	Daniel John Brabant Charlotte India Brabant
Application lodged:	21/12/2017
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	22/12/2017 to 29/01/2018
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	Approval
Estimated Cost of Works:	\$ 491,395.00

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.

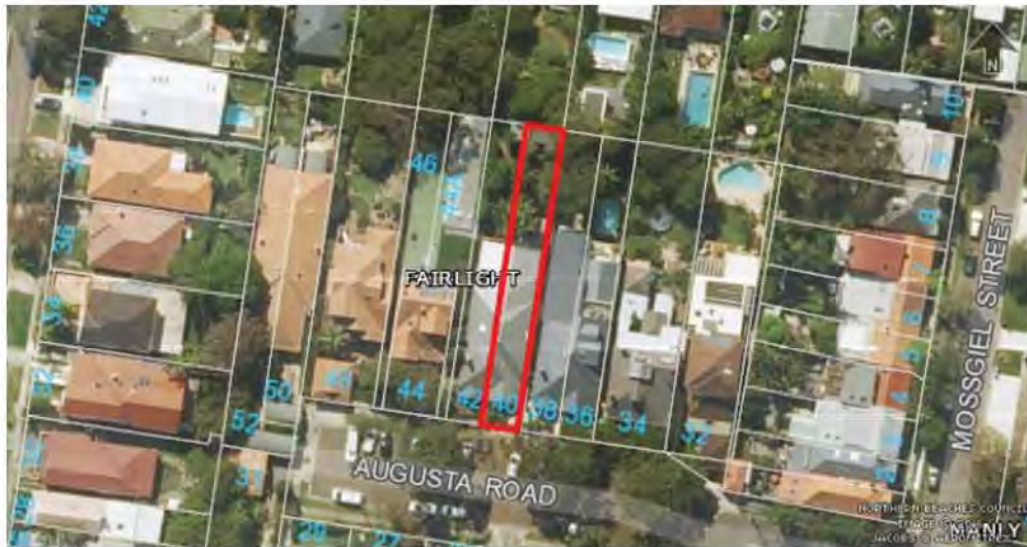
SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 112 DP 616175 , 40 Augusta Road FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Augusta Road.</p> <p>The site is regular in shape with a frontage of 6.21m along Augusta Road and a depth of 49.99m. The site has a surveyed area of 302.1m².</p> <p>The site is located within the R1 General Residential zone and accommodates an existing semi-detached dwelling house.</p> <p>The site slopes down from the south- west corner to the north-east corner of the property approximately 4.1m.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by detached and semi-detached dwelling houses.</p>

Map:



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	Manly 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> <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 clause is not relevant to this application.</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 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 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</p>

Section 79C 'Matters for Consideration'	Comments
	building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" 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:
Mr Stephen James Hobson Mrs Jodiann Marie Hobson	38 Augusta Road FAIRLIGHT NSW 2094

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

Mr. Stephen Hobson (38 Augusta Road, Fairlight)

- Sunlight Access and Overshadowing
- Privacy
- Location of rear shed on boundary.

The matters raised within the submissions are addressed as follows:

- The proposed first floor addition may shadow into western facing bedrooms, and bathroom

which rely upon western windows for natural light, particularly in winter afternoons (1-4pm)

Comment:

The proposed shadowing that will result from the proposal is consistent with numerical control under clause 3.4.1 of the Manly. See comments in report related to overshadowing.

- Extension of the deck by 2.1m will bring the deck to approx. 1.5m past the end of upstairs balcony attached to bedroom at 38 Augusta Road. This will create a line of sight from the deck at No 40 directly onto the living and bedroom areas at No. 38 as follows:
 - the upstairs balcony
 - north-west corner of main bedroom
 - overlook lower ground rear patio

Comment:

Privacy screen on both sides of the ground and first floor balconies has been proposed. The proposed screens are 2.1m above finished floor level for the ground floor balcony and 2.6m for the first floor balcony. This will offset any unreasonable privacy impacts (visual and acoustic) to the adjoining eastern property (No. 38 Augusta Road, Fairlight) as well as western property (40 Augusta Road, Fairlight).

- Location of rear shed on boundary.

Comment:

No change to existing shed proposed.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	

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 (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.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1 (181.2m ²)	FSR: 0.68:1 (207.8m ²)	14.7%	No

Compliance Assessment

Clause	Compliance with Requirements
--------	------------------------------

Clause	Compliance with Requirements
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size OR Clause 4.1AA Minimum subdivision lot size for community title schemes development standard has taken into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement:	0.6:1 (181.2m ²)
Proposed:	0.68:1 (207.8m 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	14.7%
	26.6m ²

The proposal must satisfy the objectives of Clause 4.4 Floor Space Ratios, 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 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 MLEP 2013 are:

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

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

Comment:

The bulk and scale of the proposed development is consistent with other dwellings in Augusta Road. Nos. 38, 36 and 48 Augusta Road provide for a similar if not larger bulk and scale. The proposed upper floor extension does not result in a building that is unreasonable within 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 non-compliance is a result of the addition of the upper floor, and is entirely within the existing building footprint. The works will not obscure any landscape features on site or in the close vicinity of the site.

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

Comment:

The proposed upper floor addition is setback 7.8m from the front (southern side) of the ground floor. The increase in gross floor area in conjunction with the other works proposed will not alter that existing character of the streetscape. A semi-detached dwelling house that maintains a complaint building height as well as bulk and scale that is consistent with the neighbouring dwellings is not considered unreasonable

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

Comment:

The proposed development will not result in any unreasonable amenity impacts on adjoining properties in regards to views, privacy or overshadowing, subject to conditions.

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

Comment:

Not applicable.

What are the underlying objectives of the zone?

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

The underlying objectives of the R1 General Residential zone:

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

Comment:

The proposal will not affect the housing needs of the community.

It is considered that the development satisfies this objective.

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

Comment:

The proposal maintains housing variety within the residential area.

It is considered that the development satisfies this objective.

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

Comment:

Existing residential use remains unchanged.

It is considered that the development satisfies this objective.

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 variation to the Floor Space Ratio allows for a more useable and larger living space in a relatively dense area, thereby creating an improved outcome for the site, while retaining the existing residential use and density.

(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's written request outlines the reasons as to why compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development and provides the following environmental planning justification for the contravention of the development standard as follows:

a) to ensure the bulk and scale of development is consistent with the existing desired street form. The proposed alterations and additions maintain existing street setbacks and streetscape. The majority of the development to the first floor is proposed to appear to be built into the existing street wall. The scale of the proposed development is consistent with adjoining properties and is consistent with the existing street form.

b) to control building density and bulk in relation to a site area to ensure that development complies with open space and landscaped area criteria. The proposed development complies with open space and landscaped area criteria. The proposed development maintains side setbacks between adjoining properties. Adjoining properties are not affected by the proposed development.

c) to maintain an appropriate visual relationship between new development and the existing streetscape. It is considered that the proposed development maintains an appropriate visual relationship with the existing streetscape.

d) to minimize adverse environmental impacts on the use or enjoyment of adjoining land.

The proposed development maintains side setbacks between adjoining properties. Adjoining properties are not affected by the proposed development.

e) To provide for the viability of business zones and encourage the development, expansion and consolidation of business zones. The subject site is not located within a business zone. Therefore this objective does not apply to the subject site.

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

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances;

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

In this instance, compliance with the maximum floor space ratio is considered unnecessary and unreasonable.

The subject property has an existing semi detached dwelling and is capable of accommodating alterations and additions that compliment the existing dwelling, surrounding dwellings and streetscape.

Development on the subject property will not compromise the long term residential use. The proposed development will not compromise the long term residential use.

Environmental controls can be put in place to mitigate stormwater measures as well as soil and erosion.

The design of the proposed development will be visually compatible with the neighbouring buildings.

The site is readily serviced with direct access to Augusta Road and existing connection to water, sewerage and gas.

CONCLUSION

This letter provides justification for departure from Development Standard in relation to Clause 4.4 of Manly LEP using a Clause 4.6 Variation to Development Standard.

Whilst the Floor Space Ratio of the subject Development departs from the maximum FSR identified for R1 – Residential Zoned Land, it satisfies the relevant objectives of the development standard and the broader planning and zoning objectives for the locality.

It will not result in any detrimental impacts upon the streetscape or adjoining properties as a result of the proposed development.

result of the non-compliance. The design, height, scale, bulk and setbacks of the proposal are compatible with nearby residential housing forms in the surrounding locality. The proposed development will not result in any unreasonable or unacceptable amenity impacts to neighbouring residential properties in terms of overshadowing, overlooking, loss of privacy, views or visual bulk and scale. It is considered that the non-compliance with Clause 4.4 Floor Space Ratio (FSR) of Manly LEP by the proposed alterations and additions to the existing dwelling at 40 Augusta Road Fairlight, is justified under Clause 4.6 Exceptions to development standards."

(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 R1 General 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.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 302.1m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	East: 7m (based on gradient 1:12)	8.2m	17%	No
	West: 7m (based on gradient 1:12)	8.2m	17%	No
4.1.2.2 Number of Storeys	2	3	N/A	No
4.1.2.3 Roof Height	Height: 2.5m	0.3m	N/A	Yes

4.1.4.2 Side Setbacks and Secondary Street Frontages	2.73m (based on eastern wall height)	1m (Ground floor)- 2.04m (First floor)	63%	No
	2.73m (based on western wall height)	0m	100%	No
	Windows: 3m	2.04m (first floor)	N/A	No
4.1.4.4 Rear Setbacks	8m	12.92m (Measured from rear stair access)	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (166.16m ²) of site area	44% 135m ²	18.75%	No
	Open space above ground 25% of total open space	16% 21.9m ²		Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (47.25m ²) of open space	75%	N/A	Yes
	1 native trees	2 trees	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.5.5 Landscaping	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.2.1 Wall Height	No	Yes
4.1.2.2 Number of Storeys	No	Yes
4.1.2.3 Roof Height	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.4.1 Street Front setbacks	Yes	Yes
4.1.4.2 Side setbacks and secondary street frontages	No	Yes
4.1.4.4 Rear Setbacks	Yes	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements	No	Yes
4.1.5.2 Landscaped Area	Yes	Yes
4.1.5.3 Private Open Space	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.2 Alterations and Additions	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

The proposal is consistent with the relevant objectives relating to Sunlight Access and Overshadowing in section 3.4 of the Manly DCP. The relevant objectives in the Manly DCP that relate to Sunlight Access and Overshadowing are as follows:

Merit consideration:

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

Comment:

The proposed works will allow for adequate sunlight to penetrate the subject site and adjoining dwellings.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

In regards to shadowing to adjoining properties private open space, the existing saturation remains unchanged at 9am, 12pm and 3pm. The proposal is compliant Clause 3.4.1 of the Manly DCP.

The proposal works do not give rise to any unreasonable increase in overshadowing to the living room windows of the adjoining property. The proposed floor addition has been setback 2.2m from the eastern side setback to allow for reasonable levels of sunlight access to the living rooms windows of the adjoining eastern property (38 Augusta Road, Fairlight).

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

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

Comment:

The proposed complaint rear (north) side setback, helps to minimise the overshadowing impacts to the adjoining properties as well as the subject site.

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

3.4.2 Privacy and Security

Merit consideration:

The proposal is consistent with the relevant objectives relating to Privacy and Security in section 3.4 of the Manly DCP. The relevant objectives in the Manly DCP that relate to Privacy and Security are as follows:

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

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

Comment:

The proposed dwelling allows for adequate levels of privacy to be maintained to adjoining properties and the subject site, subject to conditions.

38 Augusta Road, Fairlight

The proposed ground and first floor terrace/balcony areas have been screened on both the eastern and western sides so as to reduce any potential for overlooking between the subject site and adjoining properties 38 and 42 Augusta Road. The new windows on the first floor addition are highlight windows (1.8m above finished floor level) so as to limit the potential for overlooking to 38 Augusta Road (adjoining eastern property).

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

Comment:

The privacy screen adjoining the deck allows for a larger outdoor living area, while not unreasonably increasing privacy impacts both visual and acoustic by screening between outdoor living areas.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed dwelling maintains an open frontage to allow for passive surveillance.

Having regard to the above assessment, it is concluded that the proposed development is consistent

with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

The proposal is non-compliant with the control for wall height. An assessment of the proposal against the objectives for Building Height is 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,

The proposal involves the addition of an upper floor. The proposed dwelling will have a compliant building height as viewed from the Augusta Road. The proposed ridge line is similar to other dwellings along the southern side of Augusta Road, with the non-compliant section of the wall height resulting from the fall of the land. Given the above, the proposed dwelling ensures that the building height is consistent with surrounding development and has regards to the topography of the land.

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

As a result of the rear setback, and compliant landscaped open space, the proposal reasonably controls bulk and scale so as to present appropriately in the street and not have any unreasonable amenity impacts.

(c) to minimise disruption to the following:

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

There are no unreasonable impacts upon views from the proposed development.

(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,

The solar impacts of this aspect of the development are minimal and acceptable in terms of their impacts on habitable rooms of the adjoining dwelling to the east and west. The north/south orientation of the lot and adjoining lots combined with a compliant rear setback ensures that sunlight is provided to the private open space of the adjoining lots.

(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.

The wall height non-compliance does not create overshadowing impacts over land in recreation or environmental protection zones.

Given the above it is considered that the relevant Building Height objectives outlined in Clause 4.3 of the Manly LEP have been achieved, and is therefore considered acceptable on merit.

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

Description of non-compliance

Clause 4.1.4.2 of the MDCP 2013 requires that the side setbacks for residential dwellings must not be less than one third of the height of the adjacent external wall equal to 2.73 for the east and west side

setback. The proposed works have a side setback of 0-2.04m, a variation of 63-100% to the numeric control.

Merit consideration:

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

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

Comment:

The proposed works first floor is consistent with other two storey detached and semi-detached dwellings within the streetscape.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed works will retain privacy to adjoining properties, subject to conditions There is no unreasonable overshadowing impact that will result from the proposed works (see comments under Part 3 General Principles of Development).

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

Comment:

Flexibility is given in this situation, as there is no unreasonable impacts that will result from the proposed development, subject to conditions.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal is compliant with the numerical control relating to landscaped open space. There is no

loss of important existing landscaping features on site.

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

Comment:

Not applicable.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5 of the Manly DCP requires a Total Open Space equal to at least 55% (166.16m²) of site area. The proposed works have a Total Open Space measured to 135m², a 18.75% variation to the requirement and therefore non-compliant with the numerical control.

Merit consideration:

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

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

Comment:

There is no reduction of any important existing landscape features on the site.

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

Comment:

The proposal maintains compliance with the Landscape Open Space provision under the Manly DCP.

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

Comment:

The proposed works will retain privacy to adjoining properties, subject to conditions There is no unreasonable overshadowing impact that will result from the proposed works (see comments under Part 3 General Principles of Development).

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

Comment:

The proposal retains reasonable levels of landscaped open space at ground level to the front and rear of the dwelling to minimise the stormwater runoff that may result from the proposed development.

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

Comment:

The proposed private open space is compliant with the numerical requirements under the Manly DCP. The proposed works will not lead to an increased spread of weeds.

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

Comment:

The subject site is not in the vicinity of any important wildlife corridors.

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

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

Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2017/1312 for Alterations and additions to the existing semi detached dwelling on land at Lot 112 DP 616175, 40 Augusta Road, FAIRLIGHT, 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
A005/ Proposed Site Plan	12 December 2017	Derive Architecture and design
A110/ Proposed Lower Ground Floor Plan	12 December 2017	Derive Architecture and design
A111/ Proposed Ground Floor Plan	12 December 2017	Derive Architecture and design
A112/ Proposed First Floor Plan	12 December 2017	Derive Architecture and design
A115/ Proposed Roof Plan	12 December 2017	Derive Architecture and design
A310/ Proposed Elevations	12 December 2017	Derive Architecture and design
A311/ Proposed Elevations	12 December 2017	Derive Architecture and design
A312/ Proposed Section- A	12 December 2017	Derive Architecture and design
A411/ Proposed Section- B	12 December 2017	Derive Architecture and design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX certificate number: A294050	12 December 2017	Derive Design

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

Landscape Plans		
Drawing No.	Dated	Prepared By
1/3/ Landscape Plan	November	Urban Sanctum

	2017	landscape design
1/2/ Details Sheet	November 2017	Urban Sanctum landscape design

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. Security Bond

A bond (determined from cost of works) of \$1,500 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

5. Stormwater Disposal (Manly)

Stormwater shall be disposed of to an existing approved system or in accordance with Council's Manly Specification for on-site Stormwater Management.

Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Council's specification 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

6. 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)

7. **Privacy Screens**

The proposed privacy screens on the ground and first floor balconies shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

Reason: In order to maintain privacy to the adjoining / nearby property. (DACPLC06)

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

8. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

Details demonstrating compliance are to be submitted to the Principal 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.







ITEM 3.4	DA2017/0662 - 44 ROSE AVENUE AND 43 LANTANA AVENUE, WHEELER HEIGHTS - DEMOLITION WORKS, CONSTRUCTION OF A SENIORS HOUSING DEVELOPMENT AND STRATA SUBDIVISION
REPORTING OFFICER	RODNEY PIGGOTT
TRIM FILE REF	2018/226914
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and 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, **refuses** Application No. DA2017/0662 for demolition works, construction of a Seniors Housing Development and Strata Subdivision at Lot 4 DP 203378 and Lot 4 DP 26532, 44 Rose Avenue and 43 Lantana Avenue, Wheeler Heights subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2017/0662
Responsible Officer:	Luke Perry
Land to be developed (Address):	Lot 4 DP 203378, 44 Rose Avenue WHEELER HEIGHTS NSW 2097 Lot 4 DP 26532, 43 Lantana Avenue WHEELER HEIGHTS NSW 2097
Proposed Development:	Demolition works, Construction of a Seniors Housing Development and Strata Subdivision
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Local Planning Panel
Land and Environment Court Action:	No
Owner:	Bayview Links Pty Limited
Applicant:	Bayview Links Pty Limited
Application lodged:	05/07/2017
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Seniors Living
Notified:	20/10/2017 to 08/11/2017
Advertised:	21/10/2017
Submissions Received:	33
Recommendation:	Refusal
Estimated Cost of Works:	\$ 6,247,937.00

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

Warringah Development Control Plan - B5 Side Boundary Setbacks

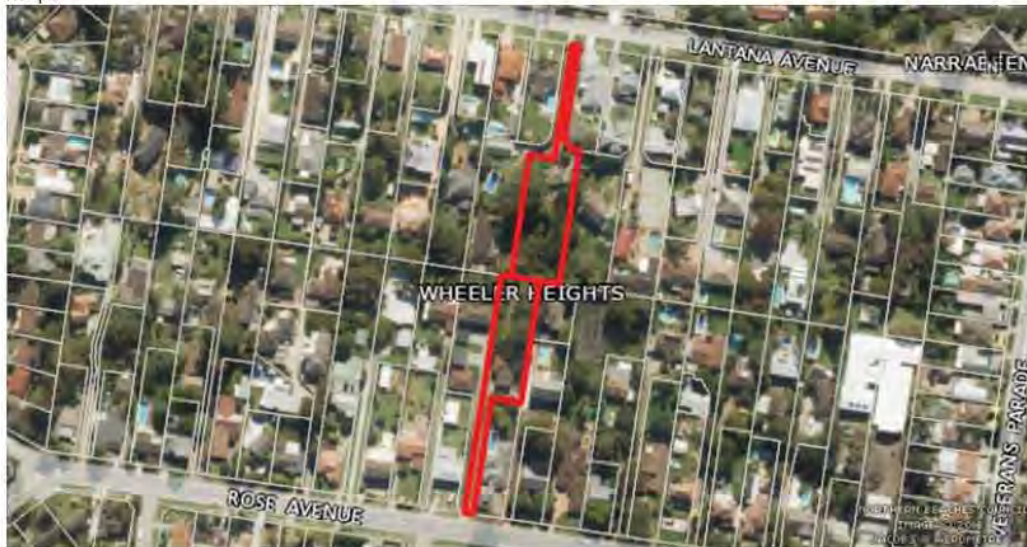
SITE DESCRIPTION

Property Description:	<p>Lot 4 DP 203378 , 44 Rose Avenue WHEELER HEIGHTS NSW 2097</p> <p>Lot 4 DP 26532 , 43 Lantana Avenue WHEELER HEIGHTS NSW 2097</p>
Detailed Site Description:	<p>The subject site consists of two (2) allotments located on the northern side Rose Avenue and the Southern side of Lantana Avenue.</p> <p>The site is a battle axe shaped site with a frontage of 4.57m along Rose Avenue, 3.66m along Lantana Avenue and a combined depth of 249.2m. The site has a surveyed area of 3444m².</p> <p>The site is in excess of 20 metres in width when measured outside of the access handles.</p> <p>The site benefits from right of carriageways accessed from both street frontages.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates two single dwelling houses in landscaped settings. The site falls from the Rose Avenue frontage to the Lantana Frontage (south to north) approximately 8 metres.</p> <p>The site does not contain any significant topographical features.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a mix of single and two storey dwelling houses in landscaped settings.</p>

The site is located within walking distance to Wheeler Heights shops which provides a range of services. The site is well serviced by public transport with bus stops located along each street frontage and further east along Veterans Parade.

To the east of the subject site is St Rose Catholic School and Wheeler Heights Public School. To the north is a retirement village (RSL Anzac Village 'War Vets').

Map:



SITE HISTORY

Pre Lodgement Meeting (PLM2017/0033)

A pre lodgment meeting was held on 18 May 2017 to discuss works that are the subject of this development application.

The concluding comments from the notes of the meeting state the following:

'The revised plans submitted for review following the meeting have addressed a number of issues raised at the meeting and are largely satisfactory. There are still concerns raised regarding the setback of Unit No. 1 to the southern boundary of the site and the potential impact this will have on the adjoining property. Further consideration must be given to increasing the setback of this portion of the building to the boundary to minimise any potential impact.'

The issue of owners consent for works over and in the right of carriageways must be resolved and owners consent provided prior to the lodgement of a development application.'

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the demolition of the existing structures, construction of housing for seniors or people with a disability (in-fill self-care housing) and strata subdivision.

Specifically the works include:

- Demolition of existing dwellings and other structures;
- 13 x 3 bedroom self contained dwellings;
- Basement parking for 24 vehicles; and
- Landscaping works.

AMENDMENTS TO THE APPLICATION

1st Amendment

In response to submissions made against the application in relation to owners consent from No. 45 Lantana Avenue, the applicant sought to amend the application in accordance with s55 of the Environmental Planning and Assessment Regulation 2000 by email dated 06/09/2017.

The amendments removed vehicular access from Lantana Avenue and retained landscaping, bin rooms and seating along the Lantana Avenue Right of Carriageway (ROW). All vehicular access is proposed via Rose Avenue.

The amendments were accepted by Council and the application was re-advertised in the Manly Daily on 21 October 2017. The application was re-notified to surrounding properties by letter dated 20 October 2017.

2nd Amendment

The amendments made above were reviewed by Council and the assessment deemed that these amendments did not satisfactorily address the issue of owners consent. The applicant was advised of this by letter dated 7 December 2017 and requested to withdraw the application.

The applicant responded by email dated 22 December 2017 with a further request to amend the application.

The amendments consisted of an amendment to the lay out of the basement to provide two basements, separated by a party wall, with access off Lantana Avenue and Rose Avenue rather than a single basement as originally submitted.

Council advised the applicant by email 9 January 2017 that it did not agree to or accept the amendments and the application would be determined in its current form with a recommendation for refusal.

3rd Amendment

In response to concerns raised by Council regarding the strata subdivision component of this application and the absence of a Clause 4.6 written request to vary the minimum subdivision lot size development standard, the applicant formally withdrew this component of the application by email dated 10/04/2018. Approval is no longer sought for strata subdivision.

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)(iia) – 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> <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</p>

Section 79C 'Matters for Consideration'	Comments
	of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent.
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><u>Environmental Impact</u> 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 design of the development is considered to be satisfactory by providing a development that is commensurate with that of surrounding development and provides a satisfactory streetscape outcome. The buildings have been well articulated and provide appropriate physical separation and setbacks to ensure the bulk and scale is minimised. The development will fit comfortably within its surrounds and has a built form that is reflective of the predominant character in the area of detached style housing in landscape settings.</p> <p>The development will not result in any adverse impacts on the adjoining lands in terms of privacy, view loss or overshadowing.</p> <p>The site is located within close proximity to local bus services along Rose Avenue, Lantana Avenue and Veterans Parade, which provides alternative transport links to the wider areas of the northern beaches and the city and is easily accessible for seniors or people with a disability.</p> <p><u>Social Impact</u> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>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>Furthermore, the proposal will also result in positive social outcomes in terms of providing appropriate housing to accommodate the needs of seniors and people with a disability.</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	See discussion on "Public Exhibition" in this report.

Section 79C 'Matters for Consideration'	Comments
EPA Regs	
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 33 submission/s from:

Name:	Address:
Mrs Linda Anne Kemp	46 Rose Avenue WHEELER HEIGHTS NSW 2097
Mr Rodney James Millichamp	29 Rose Avenue WHEELER HEIGHTS NSW 2097
Mrs Helen Elizabeth Millichamp	
Mr Gary Stephen Adams	41 Lantana Avenue WHEELER HEIGHTS NSW 2097
Patrick Francis Leydon	27 Lantana Avenue WHEELER HEIGHTS NSW 2097
Mr Matthew David Furnell	55 Lantana Avenue WHEELER HEIGHTS NSW 2097
Ms Amanda Heather Garland	40 Rose Avenue WHEELER HEIGHTS NSW 2097
Mrs Linda May Moss	47 Lantana Avenue WHEELER HEIGHTS NSW 2097
Ms Jill Collier	17 Lantana Avenue WHEELER HEIGHTS NSW 2097
Mrs Maria Anne Thompson	53 Lantana Avenue WHEELER HEIGHTS NSW 2097
Mr John William Walton	49 Lantana Avenue WHEELER HEIGHTS NSW 2097
Mrs Jaqueline Esme McKinn	29 A Lantana Avenue WHEELER HEIGHTS NSW 2097
Cleve Mitchell	33 Lantana Avenue WHEELER HEIGHTS NSW 2097
Craig Robert Gilmour	58 Rose Avenue WHEELER HEIGHTS NSW 2097
Mrs Merryn Jane McLachlan	63 A Lantana Avenue WHEELER HEIGHTS NSW 2097
Tomasy Pty Ltd	Level 1, 1073 Pittwater Road COLLAROY NSW 2097
Ms Valerie Eileen Moran	37 Lantana Avenue WHEELER HEIGHTS NSW 2097
Peter Leslie Knoechel	38 Rose Avenue WHEELER HEIGHTS NSW 2097
Mrs Sally Jane Knoechel	
Julie Anne Dahlberg	59 Lantana Avenue WHEELER HEIGHTS NSW 2097
Mrs Barbara Hilda Elgafi	54 Rose Avenue WHEELER HEIGHTS NSW 2097
David Charles Moss	47 Lantana Avenue WHEELER HEIGHTS NSW 2097
Mrs Meredith Leader Van Wensveen	66 Rose Avenue WHEELER HEIGHTS NSW 2097
Miss Leanne Robyn Frith	15 Grasmere Crescent WHEELER HEIGHTS NSW 2097

Name:	Address:
Ms Cherie Francine Woodley	37 Rose Avenue WHEELER HEIGHTS NSW 2097
Mrs Helen Janelle Churchill	13 Rose Avenue WHEELER HEIGHTS NSW 2097
Rebecca Henderson	33 Rose Avenue WHEELER HEIGHTS NSW 2097
Mrs Roslyn Joy Farr	35 Rose Avenue WHEELER HEIGHTS NSW 2097
Mrs Dorothy Susan Waterhouse	56 Rose Avenue WHEELER HEIGHTS NSW 2097
Mrs Shirley Irene Smith	52 Rose Avenue WHEELER HEIGHTS NSW 2097
Mrs Wendy Collett	7 Berith Street WHEELER HEIGHTS NSW 2097
Lyndall Paula Nesci	76 Rose Avenue WHEELER HEIGHTS NSW 2097
Mrs Diane Rae Garling	4 Berith Street WHEELER HEIGHTS NSW 2097
Mrs Margaret Anne Riddle	22 Rose Avenue WHEELER HEIGHTS NSW 2097
John Frederick Hiscox	74 Rose Avenue WHEELER HEIGHTS NSW 2097

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

- **Owners consent**
- **Privacy**
- **Overshadowing**
- **Access to bus stops and shops**
- **Traffic and parking impacts**
- **Future occupancy**
- **Overdevelopment**
- **Site frontage**
- **Location of bin room and seats**

The matters raised within the submissions are addressed as follows:

Owners consent

Concerns are raised that the proposal does not have the required landowners consent from No. 46 Rose Avenue and No. 45 Lantana Avenue. The respective landowners are of the opinion their consent is required given the extent of works proposed within the right of carriageways.

Comment:

This matter has been addressed in detail elsewhere within this report (refer to final section of this report titled 'Owners consent').

In summary, the assessment of this application with respect to relevant planning legislation and case law has deemed that landowner's consent is required from all parcels of land a party to each right of carriageway.

To date, landowners consent has been provided by No. 46 Rose Avenue, albeit correspondence has been received by Council from the land owner which has sought to revoke this consent. This matter is addressed in detail later within this report.

The owners of No. 45 Lantana Avenue have not provided consent and this has formed the reason for

refusal of this application.

Privacy

Concerns are raised that the development will result in unreasonable privacy impacts on adjoining properties.

Comment:

The proposed development has been designed having regard to maintaining a reasonable level of privacy for adjoining properties and for future dwelling occupants.

The western elevation of the buildings contains mainly ground floor living areas with landscaped courtyard areas. These areas are adequately setback from the boundary of the subject site ensuring adequate physical separation is achieved between buildings, will be screened by any side boundary fencing and contain areas of substantial landscaping which will further assist to screen the development.

West facing first floor windows serve internal void/stairwell areas, which do not provide the ability for any unreasonable overlooking into adjoining properties to occur.

The eastern elevation of the buildings contains entryways and pathways to the buildings on the ground floor. Windows on the ground floor are suitably screened by landscaping and side boundary fencing, which in addition to the physical separation achieved between buildings, will ensure privacy is maintained between dwellings. The first floor windows located on the eastern elevation serve bedrooms and are screened by fixed louvers to limit opportunities for overlooking to occur.

The southern elevation of the development contains ground floor windows and no windows on the first floor ensuring no overlooking into adjoining properties will occur.

The northern elevation of the development provides adequate physical separation between the adjoining buildings at No. 45 Lantana, No 47 Lantana Avenue and No. 41 Lantana Avenue to ensure no unreasonable privacy impacts occur. The apartments located on the northern elevation (No. 12 and No. 13) address the driveway off Lantana Avenue and therefore do not provide opportunities for direct or close overlooking into the adjoining buildings or private open space.

For these reasons the development maintains a reasonable level of privacy.

This matter does not form a reason for refusal.

Overshadowing

Concern is raised that the proposed development will result in overshadowing.

Comment:

The development allows for a reasonable level of access to sunlight to be maintained for adjoining properties.

Shadow diagrams submitted with the application (refer to Drawing No. A14 prepared by Barry Rush and Associates dated 20/06/2017) demonstrate that the private open space areas of adjoining properties will continue to enjoy at least 3 hours sunlight during the hours of 9am and 3pm on June 21 in accordance with the requirements of Clause D6 – 'Access to sunlight' under WDCP 2011.

This matter does not form a reason for a refusal.

Access to bus stops and shops

Concern is raised that there is no suitable access path from the subject site to bus stops and shops as required by the SEPP.

Comment:

The subject site is located within walking distance to shops and bus stops as per the requirements of the SEPP. Pathways are provided along both street frontages east to shops and bus stops. It is acknowledged that the existing pathway located on Rose Avenue terminates at the property boundary of No.22 Rose Avenue.

Should the Panel be of a mind to approve the application appropriate conditions of consent have been recommended by Council's Development Engineer to ensure that a pathway is constructed from No. 22 Rose Avenue west to the property boundary of the subject site. This will ensure a continuous, accessible pathway is provided to the Wheeler Height shops and bus stops along Rose Avenue and Veterans Parade.

This matter could be resolved by the imposition of a condition of consent should the Panel resolve approve application.

Traffic and Parking Impacts

Concerns are raised that the proposed development will further add to existing traffic congestion and parking issues in the local area. Submissions point to existing seniors housing development in the area, the local schools and shops as causes of congestion and parking issues.

Comment:

The application has been reviewed by Council's Traffic Engineer who has provided the following comments with regards to traffic generation from the development and the proposed provision of car parking:

'The traffic report provided by the applicant was reviewed and generally concurred.

The traffic report indicated that in accordance with the Roads and Maritime Services (RMS) 'Guide to Traffic Generating Developments V2.2', the proposed development will generate approximately 28 daily vehicle trips (dvt) or 6 peak vehicle trips (pvt) which would result in a nett increase of about 4 weekday peak hour vehicle trips. The additional traffic generation will not have significant impact on the operation of the surrounding road network and is acceptable.

The proposal provides 24 car parking spaces comprising 20 resident spaces and 4 visitor spaces which complies with the SEPP's requirements and is acceptable.'

Council's Traffic Engineer confirms that the development will not have an adverse impact on the surrounding local road network and provides adequate off street car parking.

This matter does not form a reason for refusal.

Future occupancy

Concerns are raised regarding how the future occupation of the development for those over 55 will be enforced.

Comment:

Should the Panel be of a mind to approve the application, this matter could be resolved by the imposition of conditions of consent requiring a positive covenant to be registered on the title of the development which states:

'that the development is only permitted to be occupied by persons detailed as follows:

- (a) seniors or people who have a disability;*
- (b) people who live within the same household with seniors or people who have a disability;*
- (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.'*

Overdevelopment

Concern is raised that the proposal is an overdevelopment of the land.

Comment:

The assessment of this application has found the development to be generally compliant with the requirements of the SEPP, WLEP 2011 and WDCP 2011 (with the exception of Clause B5 – Side Boundary Setbacks).

In particular, the SEPP provides development standards (Clause 50) relating to building height, density and scale and landscaped area all of which are able to be used as a way of controlling the scale and size of development and minimising its impact. The development complies with the requirements Clause 50.

To this extent the development is not considered to be an overdevelopment of the land.

Site frontage

Concern is raised that the proposal does not comply with the minimum site frontage requirement under the SEPP.

Comment:

Clause 40 of the SEPP contains Development Standards that relate to minimum sizes and building height.

Clause 40 (3) relates to site frontage and reads as follows:

*'(3) Site frontage
The site frontage must be at least 20 metres wide measured at the building line.'*

As detailed throughout this report the subject site is made up of two battle-axe allotments, which are served by access handles some 60 metres in length.

The control requires the site to have a minimum frontage of 20 metres wide when measured at the

building line. Building line is not defined within the SEPP however it is defined within WLEP 2011 as:

'building line or setback means the horizontal distance between the property boundary or other stated boundary (measured at 90 degrees from the boundary) and:

- (a) a building wall, or*
 - (b) the outside face of any balcony, deck or the like, or*
 - (c) the supporting posts of a carport or verandah roof,*
- whichever distance is the shortest.'*

The access handles are not able to contain building walls, balconies, decks or the like or supporting post of a carporta or verandah.

Therefore the building line is taken at the point within the site where these buildings and structures can be provided. The width of the site when measured outside of the access handles is in excess of 20 metres and complies with the requirements of the SEPP.

This matter does not form a reason for refusal.

Location of bin rooms and seats

Concern is raised regarding the location of the bin rooms and seats and potential privacy impacts. Particular concern has been raised that people walking to and from the site along the access handle could stand on the seats and look into the adjoining properties.

Comment:

The development contains two bin rooms located along the access handles off each street frontage. The bin rooms are partially enclosed and screened to ensure their visual impact is effectively minimised. The partially enclosed nature of the bin rooms will further assist to ensure that any odour is appropriately contained within the bin room.

The seats located along the access handles are not considered to provide a reasonable opportunity for people to stand on and overlook adjoining properties. However should the Panel be of a mind to approve the application and concerned that there is a privacy impact from the seats there is no requirement for them to be provided within the planning legislation and these could be deleted by way of a condition of consent.

This matter does form a reason for refusal.

MEDIATION

As a result of the public exhibition period Council received four requests for mediation. In accordance with Council's Mediation Policy (GOV-PL 135) Council wrote to the applicant by letter dated 20 February 2018 with an invitation to participate in mediation.

The applicant responded by email dated 26 February 2018 and declined the invitation. As a result mediation did not proceed.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	No objections subject to conditions.

Internal Referral Body	Comments
Landscape Officer	<p>The landscape plans and arborist's report submitted with the application are noted.</p> <p>The landscape plan is considered acceptable in view of the building design and available space and the trees proposed for removal are unable to be retained in the design submitted.</p> <p>It is recommended that the landscape plans be included in approved plans if the proposal is to be approved.</p> <p>If the proposal is to be approved as lodged, no objections subject to conditions. If amended plans are required to address planning issues, further assessment will need to be undertaken.</p>
NECC (Development Engineering)	<p>The vehicle access and stormwater drainage proposal are satisfactory subject to recommended conditions.</p> <p>No objections are raised with regards to the proposal subject to conditions.</p> <p><u>Note to Development Assessment Officer</u></p> <p>It is noted the applicant proposes to construct structures and landscaping within adjoining properties that are not located within 44 Rose Avenue and 43 Lantana Avenue. The Development Assessment Officer to obtain the relevant advice with regards to whether the above works legally form part of this approval.</p>
Strategic & Place Planning (Urban Design)	<p>The proposal has responded appropriately to the urban design issues raised in the Pre-lodgement Meeting with Council. The proposal is acceptable in that respect.</p>
Traffic Engineer	<p>The proposal is for demolition of the existing structures on 44 Rose Avenue and 43 Lantana Avenue and construction a seniors living residential development comprising 13 x 3 bedroom apartments over basement parking for 24 cars with vehicle access from Rose Avenue.</p> <p>The traffic report provided by the applicant was reviewed and generally concurred.</p> <p>The traffic report indicated that in accordance with the Roads and Maritime Services (RMS) 'Guide to Traffic Generating Developments V2.2', the proposed development will generate approximately 28 daily vehicle trips (dvt) or 6 peak vehicle trips (pvt) which would result in a nett increase of about 4 weekday peak hour vehicle trips. The additional traffic generation will not have significant impact on the operation of the surrounding road network and is acceptable.</p> <p>The proposal provides 24 car parking spaces comprising 20 resident spaces and 4 visitor spaces which complies with the SEPP's requirements and is acceptable.</p> <p>Vehicle access to the site is proposed via a 5.5m wide access</p>

Internal Referral Body	Comments
	<p>driveway for the first 6m. The passing bay will provide an entering vehicle to wait clear of the footpath and roadway should a vehicle be exiting the property at the same time.</p> <p>The access report proposes the construction of the footpath connecting the proposed development from the frontage of No.42 Rose Ave to the future footpath outside the property No.34 Rose Avenue (which will be constructed as part of the Seniors Living Development of No.30 and 34 Rose Ave). This will provide a continuous footpath access to the bus stop and the pedestrian crossing.</p> <p>The vehicles exiting simultaneously from the basement ramp and the adjoining property joining the Right of Way (ROW) will have insufficient visibility of each other. The provision of some form of traffic control through the provision of mirrors and 'Give Way' signs is required to provide visibility and priority for the exiting vehicles joining to the ROW at the same time.</p> <p>In view of the above, no objection is raised on the proposal on traffic grounds subject to the below conditions.</p>
Waste Officer	No objections subject to conditions.
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. 830647M dated Thursday, 22 June 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 (Housing for Seniors or People with a Disability) 2004

The development application has been lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) as the development is for 13 self contained dwellings.

Chapter 1 – Preliminary

The aims of the Policy are set out in Clause 2 and are as follows;

This Policy aims to encourage the provision of housing (including residential care facilities) that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and
- (b) make efficient use of existing infrastructure and services, and
- (c) be of good design.

Comment:

The proposed development is considered to be consistent with the aims of the Policy as set out above for the following reasons:

- (a) The development will increase the supply and diversity of residences that meet the needs of seniors or people with a disability.
- (b) The proposed development also makes efficient use of existing infrastructure and services, in that the site is well serviced by existing public transport and is located within 400m of the nearest bus stop. The site is located approximately 300m - 350m from a local retail centre (Wheeler Heights Shops) which provides a mix of essential retail and commercial services.
- (c) When considering the development against the aim of achieving good design, the development must be considered in context with other provisions of the SEPP.

In particular, that development pursuant to this SEPP is to be of scale and so that is able to fit reasonably within its local context.

In this regard, this assessment has found that the built form of the development maintains a reasonable level of amenity and is compatible with the area in which it will sit. The development does not give rise to any adverse amenity impacts in terms of privacy, view loss or overshadowing and will fit reasonable within its local context..

Chapter 2 – Key Concepts

Comment:

The development comprises self-contained dwellings, which are to be occupied by seniors or people with a disability. On this basis, it is considered that the proposed development is consistent with Chapter 2 of the SEPP.

Chapter 3 – Development for seniors housing

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development application made pursuant to SEPP HSPD. Clause 18 of SEPP HSPD outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. If the application is approved the required condition would need to be included in the consent. The following is an assessment of the proposal against the requirements of Chapter 3 of SEPP (HSPD).

Development Criteria			
Clause	Requirement	Proposal	Complies
PART 2 - Site Related Requirements			
26(1)	Satisfactory access to: (a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c) the practice of a general medical practitioner	The subject site has satisfactory access to these services.	Yes
26(2)	Access complies with this clause if: (a) the facilities and services referred are located at a distance of not more than 400 metres from the site or (b) there is a public transport service available to the residents not more than 400metres away.	These services are located within walking distance from the subject site at Wheeler Heights local centre 300 metres to the east and bus services located within 400 metres of the subject site on Lantana Avenue and Veterans Parade. Pathways are provided along Lantana and Rose Avenues and Veterans Parade.	Yes
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	The site is not located within Bushfire Prone Land.	N/A
28	Consideration is given to the	Given the existing residential use of the	Yes

Development Criteria			
Clause	Requirement	Proposal	Complies
	suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.	site and documentation provided the site has access to reticulated water and sewerage infrastructure.	
29	<p>Consideration must be given to whether the proposal is compatible with the surrounding land uses having regard to the following criteria specified in Clauses 25(5)(b) (i), 25(5)(b)(iii), and 25(5)(b) (v):</p> <p>i) the natural environment and the existing uses and approved uses of land in the vicinity of the proposed development</p> <p>iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development and any proposed financial arrangements for infrastructure provision,</p> <p>v) the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.</p>	<p>The development is compatible with the surrounding natural environment and existing residential use of land within the vicinity of the proposed development.</p> <p>The site is served by existing infrastructure (electricity, water and sewerage) that is capable of meeting the demands that will arise from the development.</p> <p>For the reasons outlined within this report, the development is considered to be compatible with the bulk, scale, built form and character of the surrounding area.</p>	Yes
PART 3 - Design Requirements – Division 1			
30	A site analysis is provided.	A detailed site analysis in plan form and within the Statement of Environmental Effects has been provided which satisfactorily addresses the requirements of this control.	Yes

Clause 31 Design of in-fill self-care housing

Pursuant to Cause 31 in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004.

The provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP HSPD. A detailed assessment of the proposals inconsistencies with regards to the requirements of SLP is undertaken hereunder.

Section	Requirements	Comment

Section	Requirements	Comment
1. Responding to context	<p>Built Environment – New development is to follow the patterns of the existing residential neighbourhood in terms of built form.</p> <p>Policy environment – Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that contribute to its unique character.</p>	<p>Generally, the development follows the pattern of the existing residential neighbourhood in terms of its built form.</p> <p>The established built form in the neighbourhood is characterised by a mix of detached style dwelling houses, one to two storeys in height within landscaped settings.</p>
2. Site Planning and design	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> Minimise the impact of new development on neighbourhood character Minimise the physical and visual dominance of car parking, garaging and vehicular circulation. 	<p>The development will present as a group of part single and part storey buildings when viewed from surrounding properties. The built form is consistent with bulk and scale of surrounding buildings which are predominantly sited on battle axe allotments. The bulk and scale of the development has been effectively minimised by appropriate building setbacks, articulation and landscaping</p>
3. Impacts on streetscape	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> Minimise impacts on the existing streetscape and enhance its desirable characteristics Minimise dominance of driveways and car park entries in streetscape. 	<p>The proposed buildings will not be readily viewable from each street frontage by virtue of their battle axe lot configuration. The access handles contain areas of landscaping, seating, bin stores and hard surface driveway/pathways. The combination of landscape treatments throughout the access handle and meandering of the driveway effectively minimises the dominance of the driveway and basement car park entry on the Rose Avenue streetscape.</p>
4. Impacts on neighbours	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> minimise impacts on the privacy and amenity of existing neighbouring dwellings minimise overshadowing of existing dwellings and private open space by new new dwellings retain neighbours 	<p>The development has been assessed with regards to privacy, overshadowing, building bulk and view sharing.</p> <p><u>Privacy</u> The development has been designed having regard to maintaining a reasonable level of acoustic and visual privacy between properties.</p> <p>Appropriate building setbacks and</p>

Section	Requirements	Comment
	<p>views and outlook to existing mature planting and tree canopy</p> <ul style="list-style-type: none"> • reduce the apparent bulk of development and its impact on neighbouring properties • provide adequate building separation 	<p>effective use of privacy treatments maintain a reasonable level of privacy to adjoining properties.</p> <p>The development satisfies the requirements and objectives of Clause D3 – 'Noise' and of Clause D8 – 'Privacy' under the WDCP 2011 under the WDCP 2011.</p> <p><u>Overshadowing</u></p> <p>The shadow diagrams provided by the applicant (see Plan No. A14 dated 20/06/2017) indicates that the development will not result in any unreasonable overshadowing over the neighbouring residential properties.</p> <p>The development satisfies the requirements and objectives of Clause D6 – 'Access to Sunlight' under the WDCP 2011.</p> <p><u>Building bulk</u></p> <p>As detailed throughout this report the bulk of the building and impact on neighbouring properties has been effectively minimised by way of appropriate building setbacks, articulation and building height.</p> <p>The development satisfies the requirements and objectives of Clause 4.3 - Height of Buildings Development Standard under WLEP 2011 and Clause D9 - 'Building Bulk' under WDCP 2011.</p> <p><u>View sharing</u></p> <p>The development will not have any adverse impact on view sharing and satisfies the Planning Principle established in Tenacity Consulting v Warringah [2004] NSWLEC 140 and Clause D7 – 'Views' under the WLEP 2011.</p>
5. Internal site amenity	Objectives of this section are to:	The development is served by pathway, lift and stairwell access/egress that provides safe

Section	Requirements	Comment
	<ul style="list-style-type: none"> Provide safe and distinct pedestrian routes to all dwellings and communal facilities. 	and distinct pedestrian routes to all levels of the building, individual dwellings and to the communal facilities of the development.

Clause 32 Design of residential development In accordance with Clause 32 of SEPP HSPD a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 of Part 2.

The following table outlines compliance with the principles set out in Division 2, Part 3 of SEPP HSPD.

Control	Requirement	Proposed	Compliance
CL33 Neighbourhood amenity and streetscape	a. Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.	<p>The subject site is located within the R2 Low Density Residential zone. Surrounding land is similarly zoned with the exception of land to the north ('War Vets' Seniors Housing) which is zoned SP1 Special Activities.</p> <p>The character of the area can be described as predominantly battle axe allotments with a mix of single and two storey dwelling houses and detached garages. There are a number of dual occupancies located along Lantana and Rose Avenue. As discussed above to the north of the subject site is a large seniors living/care facility. More recently, a seniors housing development is currently being constructed to the west of the subject site on Rose Avenue.</p> <p>The development recognises the desirable elements of the subject sites current character and adopts a design that is consistent in built form with that of detached style housing in the local area.</p> <p>The buildings have been well designed through appropriate building separation, setbacks and articulation which includes single storey elements throughout the building foot print.</p>	Yes

Control	Requirement	Proposed	Compliance
	b. Retain, complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that are identified in a local environmental plan.	<p>The development is well served by areas of landscaping which will enhance and soften the visual appearance of the development when viewed from surrounding properties.</p> <p>The subject site is not located within close proximity to a heritage conservation area or any heritage items identified under WLEP 2011.</p> <p>Item No. 130 (ANZAC War Memorial) is located to the north of the subject site however the proposed development is well setback and not readily viewable from any street frontage and will have no impact upon the item.</p>	Yes
	c. Maintain reasonable neighbour amenity and appropriate residential character by; (i) providing building setbacks to reduce bulk and overshadowing (ii) using building form and siting that relates to the site's land form, and (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, (iv) and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours.	<p>The development maintains a reasonable level of neighbour amenity and appropriate residential character.</p> <p>The development has been designed having regard to maintaining a reasonable level of privacy to adjoining properties and for future dwelling occupants. Appropriate building separation, setbacks and articulation have been adopted in the design of the building to ensure the visual bulk and scale is appropriately minimised.</p> <p>The development allows for a reasonable level of solar access to be provided to adjoining properties and for future dwelling occupants in accordance with the requirements of the SEPP and Clause D6 - Access to Sunlight under WDCP 2011.</p> <p>The siting and design of the buildings appropriately relates to the site's land form and local</p>	Yes

Control	Requirement	Proposed	Compliance
		topography.	
	d. Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line,	The development will not be readily viewable from the street and fits comfortably within the building envelope and maximum height of buildings The design of the development is sympathetic with the front boundary setback of development on other battle axe allotments in the surrounding area.	Yes
	e. embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.	33% (1143 sqm) of the total site area is deep soil landscaped area. Landscaped areas are provided around the perimeter of the site, including within the access handles to the site.	Yes
	f. retain , wherever reasonable, major existing trees, and	The areas identified as soft landscaping provide a satisfactory level of landscaping through the provision of trees and shrubs which will assist in softening the appearance of the development when viewed from the street and neighbouring properties. The proposal includes the removal of a number of major trees which are located within the developable area of each subject site. However a number of major trees are also proposed to be retained where possible including a major tree located in the north western corner of the site which the building has been designed to ensure it is retained.	Yes
		The application has been reviewed by Council's Landscape Officer who raises no objections to the removal of trees, retention of trees and provision of landscaping proposed subject to conditions which have been included in	

Control	Requirement	Proposed	Compliance
	g. be designed so that no building is constructed in a riparian zone.	the recommendation of this report. The site is not located within a riparian zone.	
CL 34 Visual and acoustic privacy	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by: (a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	The development has been designed having regard to maintaining a reasonable level of acoustic and visual privacy between properties. Appropriate building setbacks and effective use of privacy treatments maintain a reasonable level of privacy to adjoining properties. The development satisfies the requirements and objectives of Clause D3 – 'Noise' and of Clause D8 – 'Privacy' under the WDCP 2011. The development satisfies this Principle.	Yes
CL35 Solar access and design for climate	The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a	The individual clauses are addressed as follows: <i>(a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space,</i> <u>Comment</u> 100% of apartments will receive a minimum of two hours direct sunlight between 9am and 3pm in mid-winter. The shadow diagrams provided by the applicant (see Plan No. A14 dated 20/06/2017 prepared by Barry Rush & Associates Pty Ltd) indicate that the development will not result in any unreasonable overshadowing over the neighbouring residential properties to the south and	Yes

Control	Requirement	Proposed	Compliance
	northerly direction.	<p>west.</p> <p>The development satisfies the requirements and objectives of Clause D6 – 'Access to Sunlight' under the WDCP 2011.</p> <p><i>(b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.</i></p> <p><u>Comment:</u> The development is accompanied by NatHERS Certificates which indicates that the development will a rating of between 3.4 Stars and 6.1 Stars with an average of 4.1 stars under the Nationwide House Energy Rating Scheme which is considered satisfactory for the location of the site.</p> <p>The environmental performance of the development is also guided by the provisions of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. The development is defined under cl.3(1) of the Environmental Planning and Assessment Regulation, 2000 as BASIX Affected Development because it involves the erection of a BASIX Affected Building.</p> <p>A BASIX certificate has been submitted with the application which demonstrates the development will achieve compliance with the minimum targets.</p>	

Control	Requirement	Proposed	Compliance
		Therefore, the development satisfies the requirements of the SEPP.	
CL 36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water re-use.	<p>The applicant has submitted stormwater plans which have been reviewed by Council's Development Engineer.</p> <p>The plans demonstrate that the development adequately manage stormwater run off on site in accordance with Council's requirements. The proposal is recommended for approval by Council's Development Engineer subject to conditions which have been included in the recommendation of this report.</p>	Yes
CL 37 Crime prevention	<p>The proposed development should provide personal property security for residents and visitors and encourage crime prevention by:</p> <p>(a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and</p> <p>(b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and</p> <p>(c) providing dwellings designed to</p>	<p>The development accommodates 13 units and is therefore not subject to an assessment under the principles of Crime Prevention Through Environmental Design (CPTED).</p> <p>Notwithstanding the above, the proposed development has been designed to meet the requirements of CPTED.</p>	Yes

Control	Requirement	Proposed	Compliance
	allow residents to see who approaches their dwellings without the need to open the front door.		
CL 38 Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and (b) provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	The development is capable of providing for obvious and safe pedestrian links to bus stops on Rose Avenue, Lantana Avenue and Veterans Parade through the provision of a public pathway located adjacent to the main pedestrian entrances to the site which provides a continuous path to the surrounding local facilities (Wheeler Heights local centre) and public transport. The development provides for a safe environment for pedestrians and motorists with convenient access and parking for residents and visitors.	Yes
CL 39 Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	Waste facilities are provided at ground level at the front of the site in the form of two bin storage rooms and within the basement car park. These facilities have been assessed by Council's Waste Management Officer who did not raise any objection to the proposal. A Waste Management Plan has been provided with the application and accepted by Council's Waste Management Department.	Yes

Part 4 - Development standards to be complied with

Clause 40 – Development standards – minimum sizes and building height

Pursuant to Clause 40(1) of SEPP HSPD a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.

The following table outlines compliance with standards specified in Clause 40 of SEPP HSPD.

Control	Required	Proposed	Compliance
Site Size	1000 sqm	3444 sqm	Yes
Site frontage	20 metres	20.11m to 25.14m	Yes
Building Height	8m or less	6.6m	Yes

Control	Required	Proposed	Compliance
	(Measured vertically from ceiling of topmost floor to ground level immediately below)		
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height.	The building is no more than two storeys in height.	Yes
	A building located in the rear 25% of the site must not exceed 1 storey in height (development within 15.51 metres of the rear boundary).	N/A - no rear setback.	N/A

Clause 41 Standards for hostels and self contained dwellings

In accordance with Clause 41 a consent authority must not consent to a development application made pursuant to Chapter 3 unless the development complies with the standards specified in Schedule 3 for such development. The following table outlines compliance with the principles set out in Schedule 3 of SEPP HSPD.

The application is supported by an Access Report (refer to Access Report prepared by Accessibility Solutions dated 28 June 2017) that demonstrates the development is capable of requiring with the requirements of Clause 41.

In this regard, compliance with the recommendations and requirements contained within the Access Report is included as a condition of consent within the Recommendation of this Report.

Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings

In accordance with Clause 50 of SEPP HSPD a consent authority must not refuse consent to a development application made pursuant to Chapter 3 for the carrying out of development for the purpose of a self contained dwelling on any of the grounds listed in Clause 50.

The following table outlines compliance with standards specified in Clause 50 of SEPP HSPD.

Control	Required	Proposed	Compliance
Building height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	6.6m	Yes
Density and scale	0.5:1	0.49:1 (1687.56 sqm)	Yes
Landscaped area	30% of the site area is to be landscaped	33% (1143 sqm)	Yes
Deep soil zone	15% of the site area	16% (561 sqm)	Yes

Control	Required	Proposed	Compliance
	Two thirds of the deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.		
Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter	100% of the apartments living rooms and private open spaces receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter.	Yes
Private open space	15sqm of private open space per dwelling not less than 3 metres long and 3 metres wide	All apartments provide adequate areas private open space.	Yes
Parking	(10 bedrooms proposed – 5 carparking spaces required)	39 bedrooms = 20 car spaces required. Car parking is provided for 20 car spaces and 4 visitor spaces.	Yes
Visitor parking	None required if less than 8 dwellings	4 visitor spaces are provided for the 13 apartments.	Yes

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	7.65m	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
6.2 Earthworks	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	6.6m	N/A	Yes
B3 Side Boundary Envelope	4m - East	Within envelope	N/A	Yes
	4m - West	Within envelope	N/A	Yes
B5 Side Boundary Setbacks	0.9m - East	<u>Buildings 'A'</u> Basement - 1.4m to 3.29m Ground Floor - 1.8m to 2.8m First Floor - 4.6m	N/A	Yes
		<u>Buildings 'B'</u> Basement - 1.54m to 7.74m Ground Floor - 4.6m First Floor - 4.6m		
		Bin room - Nil	100%	Nil
	0.9m - West	<u>Buildings 'A'</u>	N/A	Yes

		Basement - 3.2m to 4.2m Ground Floor - 3m First Floor - 3m Buildings 'B' Basement - 2.9m to 4.75m Ground Floor - 4.5m First Floor - 5m Bin room - Nil	100%	No
B7 Front Boundary Setbacks	6.5m - Rose Avenue	6m to bin room Buildings 'A' - 64.2m	N/A - exception. N/A	Yes
	6.5m - Lantana Avenue	6m to bin room Buildings 'B' - 64.61m	N/A - exception. N/A	Yes Yes
B9 Rear Boundary Setbacks	6m	N/A - two street frontages.	N/A	N/A
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	N/A - Provision of Landscaped Open Space is covered under SEPP HSPD	N/A	N/A

***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: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 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
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	N/A	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
D15 Side and Rear Fences	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
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B5 Side Boundary Setbacks

Description of non-compliance

The control requires development to be setback a minimum 0.9m from a side boundary.

The proposed bin rooms are located on the eastern side boundaries of the subject site along the access handles off Lantana Avenue and Rose Avenue.

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 location of the bin rooms does not reduce the opportunities for deep soil landscape areas to be provided on site. As detailed throughout this report the development provides for adequate areas of deep soil landscape areas.

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

Comment:

The bin room are lightweight open structures that include screening devices which will ensure the structure does not become visually dominant when viewed from the street or neighbouring properties. Further, the bin room will be screened by any 1.8m high boundary fencing.

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

Comment:

As detailed above, the proposed bin rooms will not be visually dominant by way of scale or bulk when viewed from adjoining properties or the street.

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

Comment:

The location of the bin rooms will not result in any unreasonable privacy, amenity or overshadowing.

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

Comment:

The development allows for 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.

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.

Owners consent

As detailed throughout this report, the application proposes access (pedestrian and vehicular off Rose Avenue and pedestrian only off Lantana Avenue) by way of two right of carriageways (ROW) serving each of the existing allotments.

The Rose Avenue ROW serves No. 46 Rose Avenue and No. 44 Rose Avenue (subject site).

The Lantana Avenue ROW serves No. 43 Lantana Avenue (subject site) and No. 45 Lantana Avenue who enjoy reciprocal rights.

The works proposed within each ROW are detailed below:

Rose Avenue

- Driveway;
- Passing bay;
- Bin room;
- Seat; and
- Landscaping.

Lantana Avenue

- Pedestrian pathway;
- Bin room;
- Seat; and
- Landscaping.

These works form an integral part of the development application and are detailed in the information submitted with the application (architectural plans, relevant reports and SEE)

Rose Avenue ROW

The consent of the landowner of No. 46 Rose Avenue has been provided by letter dated 13 July 2017 which effectively granted consent to the making of the development application. Council has subsequently received written correspondence dated (6 November 2017) from the owner of No. 46 Rose Avenue seeking to revoke/withdraw its consent to the application.

The issue of owners consent and in particular the request to revoke or withdraw owners consent has been dealt with by the Land and Environment Court of NSW.

The judgement made in '*Rothwell Boys Pty Ltd v Coffs Harbour Council [2012] NSWLEC 19*', confirms that once consent has been given to a development application there is no opportunity to revoke it or withdraw it prior to the determination of the application.

Therefore the correspondence received by the owner of No. 46 Rose Avenue (dated 6 November 2017), does not have the effect of withdrawing owners consent and it is considered that consent has been granted to the making of the development application.

Lantana Avenue ROW

The consent of the landowner of No. 45 Lantana Avenue has not been provided. As discussed above, the assessment of this application has deemed that the works proposed within the ROW form an integral part of the application and require the consent of the landowner of No. 45 Lantana Avenue.

It is noted that no works are proposed within the 'boundaries' of No. 45 Lantana Avenue however the property has the legal right of access over No. 43 Lantana Avenue and therefore any works within the right of way area require the consent of No. 45 Lantana Avenue.

This is considered to be consistent with the judgement made in '*Owners - Strata Plan 37762 v Pham and Ors (2005) NSWLEC 500*'.

This is a fundamental issue and forms the recommendation for refusal of this application.

Intensification of use (right of carriageway)

As detailed above, the subject site is comprised of two battle axe allotments of which each are a party to ROWs.

No. 44 Rose Avenue currently enjoy rights of access over the the access handle of No. 46 Rose Avenue and vice versa.

No. 43 Lantana Avenue currently enjoys rights of access over the access handle of No. 45 Lantana Avenue and vice versa.

The development proposes access from both street frontages, which in effect will allow access between each of the existing allotments using the existing ROW enjoyed by each lot.

The issue at hand is that No. 44 Rose Avenue does not have the benefit of the ROW over No. 43 Lantana Avenue. Much the same No. 43 Lantana Avenue does not have the benefit of the ROW over No. 44 Rose Avenue. Further, neither lot enjoys any other legal entitlement to use any part of the other lot by way of ROW, easement or otherwise.

The use of an easement, ROW or the like cannot be extended, beyond the scope of the original grant, to impose a burden greater than that which all those landowners party to the easement agree to accept which in this case of the landowners of No. 45 Lantana Avenue are not willing to accept or grant consent.

The development as proposed therefore represents an intensification of user of each of the ROWs which would not have been contemplated by each of the respective parties when agreeing to the easements.

Such an intensification is considered to be 'development' as defined under the EP&A Act 1979 and therefore requires 'consent'. As discussed above, the consent of the landowner of No. 46 Rose Avenue has been granted however the consent of the landowner of No. 45 Lantana Avenue has not been granted.

The assessment of this application has deemed the consent from No. 45 Lantana Avenue is required.

Further, the absence of this consent leaves unresolved a fundamental component of the development (access) and as such is not a matter that can be resolved by the imposition of a Deferred Commencement Condition.

This is considered to be consistent with the judgements made in in '*Huntington & Macgillivray v Hurstville City Council [No 2] [2005] NSWLEC 155*' and the decision of the High Court of Australia in '*Westfield Management Limited v Perpetual Trustee Company Limited [2007] HCA 45*'.

This is a fundamental issue and forms the recommendation for refusal of this application.

CONCLUSION

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

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

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

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2017/0662 for the Demolition works, Construction of a Seniors Housing Development and Strata Subdivision on land at Lot 4 DP 203378,44 Rose Avenue, WHEELER HEIGHTS, Lot 4 DP 26532,43 Lantana Avenue, WHEELER HEIGHTS, for the reasons outlined as follows:

1. Pursuant to Section 79C(1)(a)(iv) of the Environmental Planning and Assessment Act 1979 the application does not comply with the provisions of Section 49(1) of the Environmental Planning and Assessment Regulation, 2000 in that the application does not provide sufficient information in the form of owners consent in writing from the owners of No. 45 Lantana Avenue for works within the right of carriageway and intensification of use of the right of carriageway.





ITEM 3.5 **DA2017/1137 - 22-24 LAGOON STREET, NARRABEEN -
DEMOLITION WORKS AND CONSTRUCTION OF A SENIORS
LIVING DEVELOPMENT**

REPORTING OFFICER **RODNEY PIGGOTT**

TRIM FILE REF **2018/227910**

ATTACHMENTS 1 [↓](#) **Assessment Report**
 2 [↓](#) **Site Plan and Elevations**
 3 [↓](#) **SEPP 1 Objection**
 4 [↓](#) **WDAP Minutes - 8 October 2014**

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. DA2017/1137 for demolition works and construction of a Seniors Living Development at Lot A and B DP 383293, 22-24 Lagoon Street, Narrabeen subject to the conditions and for the reasons set out in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2017/1137
Responsible Officer:	Luke Perry
Land to be developed (Address):	Lot B DP 383293, 22 Lagoon Street NARRABEEN NSW 2101 Lot A DP 383293, 24 Lagoon Street NARRABEEN NSW 2101
Proposed Development:	Demolition works and construction of a seniors living development
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Local Planning Panel
Land and Environment Court Action:	No
Owner:	Graybridge Pty Ltd
Applicant:	BBF Town Planners
Application lodged:	22/11/2017
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Residential - Seniors Living
Notified:	08/12/2017 to 01/02/2018
Advertised:	09/12/2017
Submissions Received:	101
Recommendation:	Approval
Estimated Cost of Works:	\$ 5,470,194.00

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

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B7 Front Boundary Setbacks

SITE DESCRIPTION

Property Description:	Lot B DP 383293 , 22 Lagoon Street NARRABEEN NSW 2101 Lot A DP 383293 , 24 Lagoon Street NARRABEEN NSW 2101
Detailed Site Description:	<p>The subject site consists of two (2) allotments located on the north-western corner of Lagoon Street and Wellington Street. The site is legally known as Lot A and Lot B in DP 383293, No. 22 and No. 24 Lagoon Street, Narrabeen.</p> <p>The site is rectangular in shape with a frontage of 30.48m along Lagoon Street and a depth of 36.575m (along Wellington Street). The site has a surveyed area of 1,115m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates two dwelling houses which are both part two storeys in height. The R2 zone extends in a strip to the north along Lagoon Street and is characterised by detached dwelling houses with sporadically located residential flat buildings.</p> <p>The site is located at the interface of two other land zones, being the B2 Local Centre zone to the south and the R3 Medium Density Residential zone to the east and south-east. A 5 storey mixed use development is located within the 'B2 - Local Centre' zone. The R3 Medium Density Residential contains a mix of detached dwelling houses and residential flat buildings.</p> <p>Approximately 130m to the south west of the site is a 'Local Centre' which includes a Woolworths Supermarket and a range of shops and banks. St Josephs Catholic Primary School is located to the south-east.</p>



A public reserve (Berry Reserve), which is zoned RE1 - Public Recreation, is located at the western end of Wellington Street. The reserve is owned by the Department of Lands but Council is the Trust Manager and has care and control of the reserve. The reserve accommodates a public carpark and loop road which is accessed directly from Wellington Street. In addition to the public carpark, it is noted that the loop road also services the Woolworths supermarket carpark and loading dock and the post office.

Narabeen Lake is located approximately 90m to the west and approximately 235m to the east of the site is Narrabeen Beach.

The site is characterised by a slope of 14% - 15% (5m - 6m) from Lagoon Street down to the western boundary.

Approximately 40% of the site (the lower western side) is located within a flood prone area.

Map:



SITE HISTORY

Development Application No. 2014/0810

This application for Demolition works and the construction of housing for seniors or people with a disability containing 11 self contained dwellings and basement car parking including strata subdivision was refused by WDAP on 8 October 2014.

The reasons for refusal were as follows:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the proposed development does not provide safe or suitable pedestrian access in accordance with the



objectives and requirements of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, in particular:

- Clause 2(1)(c) – Aims of Policy;
- Clause 30 – Site Analysis; and
- Clause 38 – Accessibility.

2. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development does not provide safe or suitable pedestrian and vehicle access in accordance with the objectives and requirements of Warringah Development Control Plan 2011, in particular:

- C2 – Traffic, Access and Safety; and
- D18 – Accessibility.

3. Pursuant to Section 79C(1)(a)(iv) of the Environmental Planning and Assessment Act 1979 the application does not comply with the provisions of Section 49(1) of the Environmental Planning and Assessment Regulation, 2000 in that the application does not provide sufficient information in the form of the consent in writing from the Department of Lands, to permit access over Crown land.

4. Pursuant to Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979 the site is not suitable for the development, as proposed, as it does not provide safe pedestrian and vehicle access.

5. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979 the proposed development is not considered to be in the public interest as the development does not provide safe or suitable pedestrian and vehicle access.

The proceedings in brief of this WDAP meeting are attached as an Appendix to this Report for the Panels information.

Pre Lodgement Meeting No. 2013/0113

This application was the subject of a pre-lodgement meeting held on 8 October 2013. A copy of the notes provided by Council in relation to the meeting is attached to this report (Attachment 1).

Pre Lodgement Meeting No. 2012/0053

A pre-lodgement meeting was held with Council's Strategic Planning team to discuss the potential to rezone the site to R3 Medium Density Residential.

The notes provided by Council concluded that the rezoning would not be supported as *'the proposed rezoning would constitute an unplanned, spot rezoning that would potentially establish a precedent for further similar planning proposals on the western side of Lagoon Street.'*

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks development consent for the demolition of the existing two dwelling houses and associated structures and the construction of a part two/part three storey building that is housing for seniors or people with a disability pursuant to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

The building will contain 9 self contained dwellings and basement car parking for 18 vehicles.



Specifically the works include:

Basement Floor

- Car parking for 18 vehicles;
- Bulk waste room;
- Bathroom; and
- Lift, ramp and stairwell access/egress.

Ground Floor

- 2 x 3 bedroom apartments;
- 1 x 2 bedroom apartment;
- Pedestrian entry lobby;
- Landscaping works
- Bin room; and
- Lift, ramp and stairwell access/egress.

First Floor

- 3 x 2 bedroom apartments;
- 1 x 1 bedroom apartment; and
- Lift, ramp and stairwell access/egress.

Second Floor

- 2 x 2 bedroom apartments; and
- Lift and stairwell access/egress.

Previous application v Current application

This development maintains a similar footprint to the previous application (DA2014/0810) which was refused on accessibility grounds. However, it should be noted that there is a reduction in the total number of apartments. This application proposes a building which contains 9 apartments whereas the previous application contained 11 apartments. T

This proposal seeks to address the reasons for refusal of the previous application which were predominantly based around access (pedestrian and vehicular).

This proposal provides an alternative vehicular access arrangement where vehicles enter off Lagoon Street and exit on Wellington Street rather than all access being off Wellington Street. The pedestrian access has also been substantially redesigned. This includes the provision of multiple accessible entry points to the site on both street frontages to ensure it meets the requirements of the SEPP and provides safe, suitable access to public transport and services/shops.

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 documentation has been submitted.</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> <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>
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>Environmental Impact</p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>The sloping topography of the site presents challenges in managing</p>



Section 79C 'Matters for Consideration'	Comments
	<p>the visual bulk and scale of development. The design of the development is satisfactory by providing built form that is of a bulk and scale commensurate with that of the existing surrounding development and will provide a satisfactory streetscape outcome. The building will comply with the flood planning levels applied to the site.</p> <p>The development will not result in any unreasonable impacts on the adjoining lands in terms of privacy, view loss or overshadowing.</p> <p>The site is located within close proximity to local bus services along Pittwater Road, which provides alternative transport links to the wider areas of the northern beaches and the city and is easily accessible for seniors or people with a disability. The site is located in accessible area and provides satisfactory access within the site and to shops and services south west of the site.</p> <p>In summary, the proposed development will not result in any unreasonable environmental impacts on the natural environment.</p> <p><u>Social Impact</u></p> <p>The proposed development will not have a detrimental social impact in the locality considering character of the proposal.</p> <p>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>Furthermore, the proposal will also result in positive social outcomes in terms of providing appropriate housing to accommodate the needs of seniors and people with a disability.</p> <p><u>Economic Impact</u></p> <p>The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the 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	The provision of housing for seniors and/or people with a disability in the locality is generally in the broader public interest.



Section 79C 'Matters for Consideration'	Comments
	<p>The various controls contained within State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development; State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004; the WLEP 2011 and the WDCP 2011 provide the community with a level of certainty as to the scale and intensity of future development and the form and character of development that is in keeping with the desired future character envisaged for the locality.</p> <p>This assessment has found the development to be consistent with the context, scale and intensity of development that the community can reasonably expect to be provided on this site and within the respective localities and is therefore considered to be in the public interest.</p>

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 101 submission/s from:

Name:	Address:
Mr Geoff Leonard	208 / 20 Wellington Street NARRABEEN NSW 2101
Mrs Daphne Joy Dawes Mr Allan Dawes	3 / 35 Lagoon Street NARRABEEN NSW 2101
John Frederick Haynes	1 / 13 Wellington Street NARRABEEN NSW 2101
Gail Adam	35 Little Willandra Road Cromer NSW 2099
Mr William Charles Robbie	401/20 Wellington Street NARRABEEN NSW 2101
Robert William Basham	501/20 Wellington Street NARRABEEN NSW 2101
Councillor Rory Amon (Councillor)	Northern Beaches Council Civic Centre 725 Pittwater Road DEE WHY NSW 2099
Philip Henry Summers	Drake Real Estate 1493 Pittwater Road NORTH NARRABEEN NSW 2101
Mr Allan Ross Lanes	502/20 Wellington Street NARRABEEN NSW 2101
Mrs Martina Maria Ripping	105/20 Wellington Street NARRABEEN NSW 2101
Mrs Bathiar Rosemary McLeod	308/20 Wellington Street NARRABEEN NSW 2101
Mrs Rosemary Cliff Leggatt	PO Box 196 NARRABEEN NSW 2101



Name:	Address:
Mrs Pamela Joy Sprules Mr Dennis Edward Sprules	305 / 20 Wellington Street NARRABEEN NSW 2101
Vicki Ann Allan	209/20 Wellington Street NARRABEEN NSW 2101
Suzanne Elizabeth Taylor	4 Timaru Road TERREY HILLS NSW 2084
Alison Edith O'Malley-Jones	106/18-20 Lagoon Street NARRABEEN NSW 2101
John Martin Colby	6 Ozone Parade DEE WHY NSW 2099
Anonymous	N/A
Mr David Anthony Murphy	3 Wallaby Circuit MONA VALE NSW 2103
Mrs Kathryn Clunne	84 H Prince Charles Road FRENCHS FOREST NSW 2086
Mr Donn Burton Cannon Ms Lynette Ruth Cannon	23 Alexandra Crescent BAYVIEW NSW 2104
Mr John Somerville Kennedy Mrs Nerida Katherine Kennedy	2 / 172 Ocean Street NARRABEEN NSW 2101
Ms Christine Mclean	3 Tallawarra Place NARRABEEN NSW 2101
Ms Josephine Ann O'Donnell	45 Evans Street FRESHWATER NSW 2096
Mr Jeffrey John Davis	10 / 123 - 125 Lagoon Street NARRABEEN NSW 2101
Philomena Anne Prendergast	18 / 1122 Pittwater Road COLLAROY NSW 2097
Mr Brian Douglas Hamilton	101/20 Wellington Street NARRABEEN NSW 2101
Ms Katina Mangan	PO Box 960 NARRABEEN NSW 2101
John Ivan Maras Mrs Mary Anne Maras	28 Lisle Street NARRABEEN NSW 2101
Lynette Barry-Cotter	
Mrs Jann Shirley Hamilton	1 / 20 Wellington Street NARRABEEN NSW 2101
Armando Risueno	2 Amelia Place NORTH NARRABEEN NSW 2101
Mr Garry John Gleeson	9 / 14 - 16 Ramsay Street COLLAROY NSW 2097
Marion Henriette Leonard	208 / 20 Wellington Street NARRABEEN NSW 2101
Mrs Sharni Monaghan	405 / 20 Wellington Street NARRABEEN NSW 2101
Peter Barry-Cotter	37 Blighs Road CROMER NSW 2099
Sandra Pyper	168 / 16 Boondah Road WARRIEWOOD NSW 2102
Mrs Amanda Francesca Hickey	1381 Pittwater Road NARRABEEN NSW 2101
Rosina Rittano	117 A Ocean Street NARRABEEN NSW 2101
Brenda Harris	37 / 156 Ocean Street NARRABEEN NSW 2101
Mrs Maureen Anne Rutledge	123 Powderworks Road ELANORA HEIGHTS NSW 2101
Ms Anne Colvile Small	28 Lagoon Street NARRABEEN NSW 2101
Mr George Saviour Zammit	26 Lisle Street NARRABEEN NSW 2101
Carmen Sussan Pace	26 Lisle Street Narrabeen NSW 2101
Sheila Elizabeth Lennon	7 / 6 - 8 Waterloo Street NARRABEEN NSW 2101
Mrs Irma Margaret Reid	1 / 29 Mactier Street NARRABEEN NSW 2101
Mr Craig Robert Basham	144 Lagoon Street NARRABEEN NSW 2101
Mr Owen Patrick Nolan	29 Veterans Parade COLLAROY PLATEAU NSW 2097



Name:	Address:
Mr Robert Anthony Condon	28 Lindley Avenue NARRABEEN NSW 2101
Mrs Bernice Patricia Yeates	5 / 1658 - 1660 Pittwater Road MONA VALE NSW 2103
Mr Ronald Page	156 - 164 Ocean Street NARRABEEN NSW 2101
Joan Kirkman	144 / 156 Ocean Street NARRABEEN NSW 2101
Daniel John White	PO BOX 846 NARRABEEN NSW 2101
Mr John Martin Wynen	1 Beach Road COLLAROY NSW 2097
Julie Muir	2 / 27 Lagoon Street NARRABEEN NSW 2101
Mrs Robin Margaret Apps	117 Garden Street NORTH NARRABEEN NSW 2101
Patricia Margaret Page	29 Veterans Parade COLLAROY PLATEAU NSW 2097
Mrs Louise Mary Boyd	2 Childs Circuit BELROSE NSW 2085
Mrs Marie Therese Edwards	58 Narrabeen Park Parade WARRIEWOOD NSW 2102
Mr Trevor Howard Edwards	58 Narrabeen Park Parade WARRIEWOOD NSW 2102
Mr Terence James North	107/20 Wellington Street NARRABEEN NSW 2101
Basil Daish	15 Wellington Street NARRABEEN NSW 2101
Gavin David Williamson	7 / 12 Loftus Street NARRABEEN NSW 2101
Mr Robert John McLeod Mrs Suzanne Mary McLeod	48 Plateau Road COLLAROY PLATEAU NSW 2097
Robert Paul Gray Therese Margaret Gray	10 / 10 Lagoon Street NARRABEEN NSW 2101
Mr Peter John Veney	2/14 Namitjiri Place BALLINA NSW 2478
Shelley Tunbridge	19 Narroy Road NORTH NARRABEEN NSW 2101
Mr Thomas Kevin Colman Margaret Lynette Colman	26 Lagoon Street NARRABEEN NSW 2101
Jan Carroll	
Mr Carsten Ellerman Pedersen Mrs Edwina Caroline Pedersen	19 Narroy Road NORTH NARRABEEN NSW 2101
Mr Nicholas Cornelis Beukers Mrs Johanna Maria Beukers	59 Sydney Road WARRIEWOOD NSW 2102
Mr Kenneth Philip Halliday	11 / 46 Foamcrest Avenue NEWPORT NSW 2106
Kathryn Walsh	
Babara Jamieson	
Mr Anthony George Smith	5 Pusan Place BELROSE NSW 2085
Mr BARRY MCNAMARA	
Wendy Margaret Browning	94 Anzac Avenue COLLAROY NSW 2097
Christopher Colman	2 Sunnyridge Road ARCADIA NSW 2159
Meg Bryar	
Dr Dan White	Po Box 217 LEICHHARDT NSW 2040
Dorothy Butler	41 / 156 Ocean Street NARRABEEN NSW 2101
Joyce May Harris	17 / 52 Pacific Parade DEE WHY NSW 2099
Barbara Mary Keys	9 / 64 Howard Avenue DEE WHY NSW 2099



Name:	Address:
Phyllis Young	38 / 156 Ocean Street NARRABEEN NSW 2101
Philip Mulray	35/156 Ocean Street Narrabeen NSW 2101
Frank Featherstone	36/156 Ocean Street NARRABEEN NSW 2101
Janice Rosemary Jones	1 Banksia Street DEE WHY NSW 2099
Mrs Mary Rosanne Tesoriero	17 / 11 Ocean Street NARRABEEN NSW 2101
Mrs Lynette Mary Langley	14 / 30 - 34 Gordon Street MANLY VALE NSW 2093
Mrs Stephanie Jane Dunn	2 Iramir Place WARRIEWOOD NSW 2102
Ms Paula Joy Phillips	15 / 18 Darley Street East MONA VALE NSW 2103
Mrs Pauline Elizabeth Bedford	1 / 118 - 120 Lagoon Street NARRABEEN NSW 2101
John Parnell	14 Loftus Street NARRABEEN NSW 2101
John Hutchinson	146 / 156 Ocean Street NARRABEEN NSW 2101
Mr Tom Coleman Mrs Margaret Coleman	26 Lagoon Street NARRABEEN NSW 2101
Mr Richard Lawrence Woodcock Mrs Margaret Ann Woodcock	14 Albemarle Street NARRABEEN NSW 2101
Rex Harding	
Ms Irene Frances MacDonald	310 / 20 Wellington Street NARRABEEN NSW 2101
Ann Van Haren	9/122 Ocean Street Narrabeen NSW 2101
Mr Leonardus Jacobus Theodorus Van Haren	9 / 122 - 128 Ocean Street NARRABEEN NSW 2101
Thomas Colman	26 Lagoon Street NARRABEEN NSW 2101

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

- **Traffic, Pedestrian and Parking Impacts**
- **Inconsistency with Character of the Area**
- **Building Height**
- **Precedence**
- **Fire Safety**
- **Permissability**
- **Tree Removal**
- **Non-compliance with SEPP**
- **Flood Zone**
- **Over Shadowing**
- **Privacy**
- **Accessibility**
- **Construction Impacts**
- **Location of bin room**

Note: A total of 65 of the 101 submissions received are in a pro forma letter. The issues raised within this letter have been grouped and are discussed under the headings below.

The matters raised within the submissions are addressed as follows:



Traffic, Access, Pedestrian and Parking Impacts

The following specific concerns have been raised:

- Traffic safety and traffic impacts on the local road network, in particular Wellington street, as a result of the development.
- The intersection of Lagoon and Wellington Streets is dangerous at present and that this development increases the risk of accidents and crashes
- Insufficient car parking is provided for residents, visitors and service vehicles (removalists etc)
- Insufficient pedestrian access and steep gradients of footpaths

Comment:

Traffic, Access and Parking

The traffic generation, impact on the local road network and provision of car parking has been assessed by Council's Traffic Engineer having regard to relevant planning controls.

Council's Traffic Engineer is satisfied that the proposed development will not have an adverse impact on the local road network and that traffic generated by the development will be within the environmental capacity of the local road network. The provision of off street carparking is satisfactory and complies with the requirements of SEPP HPSD. Appropriate conditions of consent have been included in the recommendation of this report relating to allocation of spaces for visitors and residential apartments.

The proposed vehicular access of a left turn entry off Lagoon Street and left turn out onto Wellington Street is considered suitable and minimises conflict on Wellington Street and with pedestrians on each street frontage.

The location of the driveways in particular the driveway on Wellington Street, has been reviewed by Council's Traffic Engineer who provided the following comments:

'The entry driveway is located on Lagoon Street with reasonable sight distance to both directions. The stopping sight distance for the westbound traffic approaching the exit driveway in Wellington Street is restricted to about 30m. However, given that the movements at the proposed driveway in Wellington Street is restricted to left or right turns into Wellington Street, also given the low amount of traffic generating from the proposal (the total of 4 vehicles in peak hours), the stopping sight distance in Wellington Street is acceptable.'

Further detailed comments made by Council's Traffic Engineer are contained within the 'Referrals' section of this report.

In summary, the proposal is supported on traffic, parking and access grounds subject to conditions included in the recommendation of this report.

Pedestrian accessibility and servicing

The development provides for obvious and safe pedestrian links to services and shops south west of the site and the bus stops on Pittwater Road through the provision of a public pathway located adjacent to the main pedestrian entrances to the site which provides a continuous path to the surrounding local facilities and public transport.

Access to these facilities is provided along both Wellington Street and Lagoon Street. It is noted that the



western end of Wellington Street is flood prone and does flood in a significant rainfall event which in flooding events will prohibit access along Wellington Street. In this situation access is still able to be provided along Lagoon Street, which is not flood prone, in accordance with the requirements of SEPP HPSD.

As discussed earlier within this report the proposal has been largely redesigned from the previous application to improve both the pedestrian and vehicular access arrangements.

In particular, the proposal provides an alternative vehicular access arrangement where vehicles enter off Lagoon Street and exit on Wellington Street rather than all access being off Wellington Street.

The development provides multiple pedestrian access points on both street frontages compared to the previous proposal which provided pedestrian access on Wellington Street only. This allows for accessible path of travel to services and public transport to be provided along Wellington Street and Lagoon Street.

The pedestrian access located on Lagoon Street will allow for vehicles servicing the site (such as removal vans, taxis, ambulances and the like) to park legally on Lagoon Street where on street parking is provided and service the site. Alternatively, these vehicles, where possible and the height of vehicles allows for it, could use the basement as a pick-up/drop-off point.

The development provides for a safe environment for pedestrians and motorists with convenient access and parking for residents and visitors.

The Access Report submitted with the application confirms that the development is located within an accessible area and that pedestrian routes to services and public transport comply with the requirements of the SEPP.

These matters do not warrant refusal of the application.

Inconsistency with Character of the Area

Concern is raised that the proposed development is inconsistent with the Character of the area and specifically, the R2 Low Density Residential Zone.

Comment:

This matter has been addressed in detail elsewhere in detail within this report (refer to Clause 33 within the SEPP Housing for Seniors or People with a Disability 2004 section of this report).

In summary, the development is considered to be consistent with the character of the local area and will relates favourably to its surrounds.

This matter does not warrant the refusal of the application.

Building Height

Concerns are raised in relation to the height of the building and non-compliance with the building height controls.

Comment:

This matter is addressed in elsewhere in detail within this report (refer to SEPP 1 Objection under the



State Environmental Planning Policy (Housing for Seniors or People with a Disability 2004 section of this report).

In summary, the non-compliance will not give rise to unreasonable impacts in terms of privacy, overshadowing, visual impact, view loss or impact on the streetscape. The building responds to its local context as is considered appropriate given the varying built forms of each street.

The development satisfies the underlying objectives of SEPP 1, SEPP HPSD and Clause 4.3 Height of Buildings Development Standard under WLEP 2011.

The applicant has addressed the requirements of SEPP 1 and provided satisfactory justification to support the variation and the variation is therefore supported in this instance.

This matter does not warrant refusal of the application.

Precedence

Concern is raised that the proposed development will set an undesirable precedence for new infill development in the vicinity, particularly in relation to the building height.

Comment:

In considering future precedence, each development application is assessed on its merits, according to the relevant planning legislation and policies. In this regard, each development application of this nature requires an assessment against the relevant provisions of the SEPP (Housing for Seniors or People with a Disability 2004) and the WLEP 2011.

The quantum of additional height has been assessed on its merits. Consideration of existing and future context of the locality, indicate that although the proposal warrants support on merit, when urban design and impact of the proposal are considered.

This matter does not warrant refusal of the application.

Fire Safety

Concern is raised that access to the proposed development via lifts will pose a safety issues in the event of a fire.

Comment:

The proposed development is required to meet the relevant provisions of the Building Code of Australia (BCA), with particular regard to fire safety and access.

A BCA report was submitted with the development application and includes an assessment in regard to fire hazards/safety. Compliance with the relevant provisions of the BCA will be required at construction certificate stage. In addition to this, it is acknowledged that this is a matter for the future residents of the development to consider and create appropriate evacuation management plans.

Appropriate means of access/egress are provided to the development and no further comment is made in this regard.

This matter does not warrant refusal of the application.

**Permissibility**

Concern is raised that the proposed development for seniors housing is not permissible within the R2 Low Density Zone.

Comment:

The application has been sought under the provisions of SEPP (Housing for Seniors or People with a Disability 2004 section of this report) and is permissible within the R2 zone. In the case where there are inconsistencies between the SEPP and the relevant Environmental Plan Zoning (R2 Low Density Residential Zone), Clause 5 of SEPP No. 1 - Development Standards states: *'This policy prevails over any inconsistency between it and any other environmental planning instrument, whenever made'*.

Tree Removal

Concern is raised that the proposed development will result in the removal of existing trees along the street frontage and in the location of the proposed driveway.

Comment:

An Arboricultural Assessment Report was submitted with the development application and has been reviewed by Council Landscape Officer. In considering the extent of the proposed tree removal (sixteen (16) unprotected trees and three (3) protected trees) and the extent of landscaping proposed, Councils Landscape Officer has no objection to the proposed development.

This matter does not warrant the refusal of the development application.

Non-compliance with SEPP

Concern is raised that the proposed development is inconsistent with the relevant provisions of the SEPP (Housing for Seniors or People with a Disability 2004). In particular building height and floor space ratio.

Comment:

A detailed assessment against the relevant provisions of the SEPP are included elsewhere within this report (refer to the State Environmental Planning Policy (Housing for Seniors or People with a Disability 2004) section of this report).

In summary, the proposal is considered to be consistent with Chapter 3 of SEPP (Housing for Seniors or People with a Disability 2004).

This matter does not warrant the refusal of the application.

Flood Zone

Concern is raised that the proposed development is located within a flood zone.

Comment:

The site is partly located within a Medium Flood Risk Planning Precinct and the land use (Seniors Living) is considered as a Vulnerable Development.



A Flood Study and Flood Risk Management Plan was submitted with the development application. The habitable areas of the development are set at or above the flood planning level.

Councils Development Engineer and Flood Management Officer have reviewed the Flood Study and Flood Risk Management Plan and has no objections to the proposal subject to the imposition of suitable conditions including the recommendations to manage the flood risk outlined within the Flood Study and Flood Risk Management Plan.

This matter does not warrant refusal of the application.

Overshadowing

Concern is raised that the development will result in unreasonable overshadowing of adjoining properties.

Comment:

The shadow diagrams provided by the applicant (see Plan No. A11 dated 10/11/2017) indicates that the development will not result in any unreasonable overshadowing over the neighbouring residential properties to the south and west.

The development satisfies the requirements and objectives of Clause D6 – 'Access to Sunlight' under the WDCP 2011.

This matter does not warrant refusal of the application.

Privacy

Concern is raised that the development will result in unreasonable privacy impacts on adjoining properties.

Comment:

This matter is address 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 boundary fencing and the substantial landscaping proposed along the western and northern boundaries of the site.

This matter does not warrant the refusal of the application.

Construction Impacts

Concern is raised that the excavation works proposed as part of the development will impact on adjoining properties. Concern is also raised the ground water seepage/run-off will result in slope instability.

Comment:



This matter has been address by the conditions of consent contained within the recommendation of this report.

A condition requiring the implementation of a Construction Management Plan has been included within the recommendation of this report to ensure that the construction impacts are effectively management and minimised as a result of the proposed works.

Further to the above, a condition has also been included requiring the applicant prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of the adjoining property to the north (No. 26 Lagoon Street).

This matter does not warrant the refusal of the application.

Location of bin room

Concern is raised regarding the location of the bin room on Lagoon Street and impact on neighbouring properties.

Comment:

The bin room is located on the Lagoon Street frontage and is setback 4.95m from the northern boundary of the site. The location of the bin room on Lagoon Street is the most appropriate location for servicing and is supported by Council's Waste Officer.

The bin room is partially enclosed and screened to ensure the visual impact of the structure is effectively minimised. The partially enclosed nature of the structure will further assist to ensure that any odour is appropriately contained within the bin room footprint.

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 these however may be determined at Construction Certificate stage.</i></p>
Environmental Health (Acid Sulphate)	<p>An Acid sulphate soil assessment was undertaken by Taylor Geotechnical Engineering titled Report on Geotechnical Investigation Proposed residential Unit Development Dated 1 July 2014 project no. TGE21424. The report states that the sandy soils ate slightly acidic, however the levels of Peroxide Oxidisable Sulfur and</p>



Internal Referral Body	Comments
	<p>titratable Peroxide Acidity are both under the NSW Acid Sulphate soils management advisory committee (ASSMAC) criteria levels which indicates that the soils would not have a significant potential for acid sulphate generation and treatment would not be required should it be disturbed through excavation. Furthermore the soil can be considered as virgin excavated natural material and is suitable for re-use as clean fill.</p> <p>No objections to this proposal subject to conditions.</p>
Environmental Health (Contaminated Lands)	Environmental Health has reviewed the application, the SOEE states that the land has only been used for residential use and the likelihood of encountering contaminated soils is extremely low. No objections from environmental Health subject to conditions.
Landscape Officer	No objections subject to conditions. The Landscape Plan should form part of the stamped plans if consent is to be granted.
NECC (Coast and Catchments)	No objection as the proposed development is not impacted by coastal processes.
NECC (Development Engineering)	No development engineering objections are raised. The proposal may be acceptable subject to conditions.
NECC (Environment Resilience & Climate Change - Riparian Lands / Creeks)	No objection to the proposed development.
NECC (Stormwater & Floodplain Engineering – Flood risk)	The proposed seniors living development is generally compliant with Council's Local Environmental Plan, Development Control Plan and the Pre-lodgement meeting advice provided. The development is recommended for approval subject to conditions.
Traffic Engineer	<p>The proposed development is for 9 units as Housing for Seniors and Disabled Persons. Parking is provided for 18 vehicles in a basement car with vehicle ingress from Lagoon Street and egress onto Wellington Street.</p> <p>Traffic generation: As indicated in the traffic report, in accordance with the Roads and Maritime Services 'Guide to Traffic Generating Developments V2.2', the proposal will generate approximately 19 daily vehicle trips (dvt) or 4 peak hour vehicle trips (pvt). Taking into account the trip generation from the existing 2 dwelling houses, the development will result in a nett decrease of some 3 daily vehicle trips; a nett increase of 2 peak hour vehicle trips over the existing circumstances. The additional traffic generating from the proposal is not considered to have adverse impact on the surrounding road network.</p> <p>Parking Provision: The proposal requires the provision of 10 car spaces and visitor spaces. There are 18 car parking spaces provided within the basement car parking including 10 tandem parking spaces. Tandem car parking spaces are acceptable only when both spaces are allocated to the same unit and could be supported for up to 10% of all car parking proposed. Also, two (2) parking space is to be allocated to the visitor parking.</p>



Internal Referral Body	Comments
	<p>Car parking and driveway: The entry driveway is located on Lagoon Street with reasonable sight distance to both directions. The stopping sight distance for the westbound traffic approaching the exit driveway in Wellington Street is restricted to about 30m. However, given that the movements at the proposed driveway in Wellington Street is restricted to left or right turns into Wellington Street, also given the low amount of traffic generating from the proposal (the total of 4 vehicles in peak hours), the stopping sight distance in Wellington Street is acceptable.</p> <p>As the visitor parking spaces are located behind the car park security door then an intercom system is required to be installed to enable visitor access into the basement parking area.</p> <p>A clear sight line of minimum dimension 2.0m by 2.5m is to be provided at the vehicle exit point to pedestrians on the adjoining footpath.</p> <p>In view of the above, there is no objection to the proposal on traffic grounds subject to condition:</p> <p><u>Assessment Officers Comment:</u></p> <p>The comments made above regarding the restriction of the total percentage of car spaces being tandem spaces are not considered to be warranted in this instance given the total amount of car parking provided is well in excess of the SEPP requirements. The car parking arrangement, including the tandem spaces, is considered to be satisfactory. It is considered that there is adequate off street parking provided to ensure that every apartment is provided with at least one car parking space. A condition has been included in the recommendation of this report requiring the tandem spaces to be allocated to individual apartments and that at least one car space is allocated to each apartment.</p>
Waste Officer	No objections are raised to the proposed development subject to conditions which have been included in the recommendation of this report.

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.
Nominated Integrated Development – NSW Office of Water – Department of Primary Industries (Controlled Activity Approval for works within 40m of	<p>The proposal was referred to Water NSW in accordance with s91 of the Environmental Planning and Assessment Act 1979 as the development requires an approval under the Water Management Act 2000.</p> <p>Water NSW provided its general terms of approval by letter dated 28</p>



External Referral Body	Comments
watercourse)	March 2018. Compliance with the general terms of approval have been included as a condition of consent within the recommendation of this report.

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.



As previously outlined the proposed development is for the erection of a part 2/part3 storey residential flat 'housing' development (seniors housing) plus basement car parking for the provisions of 9 self-contained dwellings.

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

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

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

Northern Beaches Council 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 key natural features of the area have been the subject of change over the on-going development of the area with much of the coastal setting being altered to a landscaped urban setting.

The site is located at the interface of three separate land zoning under WLEP 2011. To the east, on the opposite side of Lagoon Street (eastern side), land is zoned R3 Medium Density Residential. To the south of the subject site, land is zoned B2 Local Centre and to the west and north on the western side of Lagoon Street including the subject site itself, land is zoned R2 Low Density Residential.

The key built features of the local area consist of a mix of low density residential development in the form of detached style dwelling houses, medium density and mixed use development in the form of three, four and five storey residential flat buildings. Immediately to the south of the site is a 'Local Centre' that occupies mixed use development including a Woolworths Supermarket.



The context and key built features of the area are therefore varied and different to what is traditionally expected within a R2 Low Density Residential zone.

Notwithstanding, the site is zoned R2 Low Density Residential and is not undergoing, nor is it scheduled to undergo transition beyond what the zone envisages. However it is accepted that seniors housing development can be somewhat different to that envisaged in the R2 low density residential area due to the different density and design provisions of the SEPP HSPD.

In this regard, the building has been sufficiently designed having regard to the sensitive nature of the site and interface with a number of land zoning to ensure that is not out of scale and will fit reasonably within its local context. The building setbacks, articulation and use of high quality materials and finishes (as amended) provides an appropriate and sensitive transition from the adjoining adjacent land uses and zoning to ensure the development appropriately responds and contributes to its local context.

The development satisfies this Principle.

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 alignment, 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 site is surrounded by a mix of single and double storey detached dwelling houses, 3 to 4 storey residential flat buildings and a 5 storey mixed use development all of which contribute towards a built environment of varied scale. Because of the sloping topography and the proximity of residential zones, the scale of existing development which surrounds the site maintains an open horizontal perspective along the street and an open diagonal and vertical perspective to the skyline. Additionally, the separation between buildings reduces the scale and visual massing of development when viewed from the public domain and promotes the landscaped character of the area.

Because of this variety in built form and mix of zoning, the local area which is focussed around the intersection of Lagoon Street and Wellington Street is undergoing a visual transition from low density residential to medium density residential.

The development proposes the construction of a residential flat building which is generally consistent with the heights of surrounding development and compliant with the overall Building Height Built Form Control for the locality. In this respect, the vertical scale of the development is considered to be acceptable.

The building footprint of the development occupies a greater area of the site (i.e: 52.1%) than what is generally representative of development in the neighbouring R2 Low Density Residential zone to the north. However, the footprint is generally consistent with that of the existing residential flat buildings and mixed use development in the local area.

The development will present to the street in the form of a two storey building when viewed from Lagoon Street and in the form of a part two and part three storey building when viewed from Wellington Street. This visual presentation of the building to these two very different streetscapes is consistent with that of the scale surrounding buildings and in particular with that of buildings in each street.



In this regard, the scale of the development is considered to be an acceptable transitional response to the built form and scale of existing development in the local area.

The development satisfies this Principle.

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 density of the development is measured from the floor space ratio and residential density.

Clause 50 of SEPP HSPD sets out standards that cannot be used to refuse development consent for self-contained dwellings.

These standards include a floor space ratio (FSR) of which, if met, cannot be used to refuse an application. That FSR is 0.5:1. This assessment has found that the development proposes a FSR of 0.92:1. However, as discussed earlier within this section, the development is considered to be of a scale that will fit reasonably within its local context and is not inconsistent with the character of the local area.

With regards to residential amenity of the development in terms of floor space yield, the development proposal 9 units which will result in a density of one dwelling per 123.8m².

It should be noted that WLEP 2011 does not include a Density Built Form Control. Rather, density is gauged by how a development (where relevant) responds to the Design Quality Principles of SEPP 65, SEPP HSPD, the relevant Development Standards of the WLEP 2011 and the relevant built form controls within the WDCP 2011.

This assessment has found that the development, as proposed, achieves a satisfactory level of compliance and consistency with these Principles, Standards and controls.

In terms of availability of infrastructure, public transport, community facilities and environmental quality, the site is located within an established residential area and would be supported by the required infrastructure. The site is in close proximity to a 'local centre' that contains a mix of commercial premises including a 'Woolworths' Supermarket and is accessible to bus routes along Pittwater Road which is adequately serviced by State Transit Authority (STA) buses which provide services north to Warriewood Square and Mona Vale.

Community facilities such as schools and surf clubs are also located within comfortable walking distance to the site. In this regard, the development is considered to be consistent with the residential density in the area and sustainable in its regional context.

The development satisfies this Principle.

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 development is accompanied by NatHERS Certificates which indicate that the development will a rating of between 4.8 Stars and 7.4 Stars with an average of 5.6 stars under the Nationwide House Energy Rating Scheme which is considered satisfactory for the location of the site.

The environmental performance of the development is also guided by the provisions of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. The development is defined under cl.3(1) of the Environmental Planning and Assessment Regulation, 2000 as BASIX Affected Development because it involves the construction of a BASIX Affected Building.

A BASIX certificate has been submitted with the application which demonstrates the development has been designed to achieve the commitment targets set by SEPP (BASIX).

The development satisfies this Principle.

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 includes 337m² (30%) deep soil landscape area which is located around the perimeter of the site, including the front and side setback areas.

The Landscape Plan (Drawing No.1711/DA-L01 prepared by Trish Dobson Landscape Architecture) submitted with the application identifies planting that will enhance the landscape character of the site and maintain a reasonable level of amenity to adjoining land. The planting schedule identifies a mix of native and exotic shrubs, and trees to be planted, which will reach a maximum height of between 2.5m to 8m.

Landscaping is also provided within the front setback area and within the substantial side (western) setback area which will soften the overall appearance of the building.

Further, Council's Landscape Officer has reviewed the application and raises no objections to the development subject to conditions included in the recommendation of this report.

The development satisfies this Principle.

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 development has been assessed with regards to impacts upon the amenity of neighbouring residential properties in terms of privacy, overshadowing and view sharing.

Privacy

This matter has been addressed elsewhere within this report (refer to D8 - 'Privacy' under WDCP).

In summary, the development has been designed to have regard to maintaining a reasonable level of privacy between properties. The inclusion of screens to balconies and the effective location of balconies and windows ensures the development maintains a reasonable level of privacy.

However, the development includes a second floor balcony area on the northern side of Unit No. 8 which could result in a potential privacy conflict due to its elevated nature and location adjacent to a number of bedrooms located on the southern side of the neighbouring property to the north.

Further, the balcony areas of the second floor units contain spa baths. Minimal detail of the size, location and design of the spa baths have been provided with the application. The location of spa baths on the second floor has the potential to cause unreasonable privacy impacts and in the absence of further detail the spa baths are not supported.

Notwithstanding, this issue could be resolved through a minor redesign through making this area non-trafficable and landscaped and deletion of the spa's from the approved plans. Accordingly, conditions have been included in the recommendation of this report to this effect.

Overshadowing

This matter has been addressed elsewhere within this report (refer to Clause D6 - 'Access to Sunlight' under WDCP).

The shadow diagrams provided by the applicant (see Plan No. A11 dated 10 November 2017) indicate that the development will not result in any unreasonable overshadowing over the neighbouring residential properties to the north, south and west.

View Sharing

The development will not have any adverse impact on view sharing and satisfies the Planning Principles in *Tenacity Consulting v Warringah* [2004] NSWLEC 140 and Clause D7 - 'Views' under the WLEP 2011.

The development satisfies this Principle.

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:

This matter has been addressed elsewhere in this report (refer to Clause D22 - Safety and Security under WDCP).

In summary, the units which address the street frontage provide an optimal casual surveillance of the street.

In this regard, the proposal is considered to adequately achieve safety and security for future occupants of the development providing, good casual visual surveillance of the street and the private domain.

The development satisfies this Principle.

Principle 8: Housing Diversity and Social Interaction

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

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

Comment:

The development provides 9 apartments which vary in size and affordability. This mix is considered to provide housing to suit the social mix and needs of the locality as purchasers will choose to buy because of the proximity of the site to the Narrabeen Lagoon and Beach, accessibility to shopping and services including the 'local centre' directly to the south, and the high frequency public transport route along Pittwater Road.

The development satisfies this Principle.

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 contemporary design of the building is considered to be consistent with the design of recent development in the area, particularly the mixed use building to the south.

The building provides an articulated built form with a mix of roof styles and varying setbacks to the primary and secondary street frontages. The units are all provided with balconies which further add to provide articulation of the built form and large open terraces are provided to the second floor apartments.



The proposed landscaping will provide a desirable, improved and consistent outcome on the Wellington Street and Lagoon Street streetscapes and will further act to soften the visual appearance of the development.

The Colours and Materials Schedule will provide a softer and more articulated appearance and, therefore, provide a more sensitive visual transition between buildings and to be more sympathetic to the natural environment.

The development satisfies this Principle.

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?	Yes (detailed assessment of the developments relationship with its context and siting is provided under SEPP HSPD).
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Yes. The proposal maximises its corner allotment siting to ensure adequate solar access is afforded to surrounding properties and the development.
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?	Yes. Entry points have been well designed to ensure adequate safety and security. The public domain is enhanced by way of well defined entry ways to the site and landscaping around the perimeter of the building.
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: 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)	Adequate communal open space is provided within the development.



Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1" data-bbox="507 443 1013 869"> <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	Adequate deep soil landscaping zones are provided (15.3% of the site area).
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" data-bbox="507 1010 1013 1290"> <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+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table> <p>Note: Separation distances between buildings on the same site should combine required building separation 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>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	Adequate physical separation is achieved between the development and adjoining properties to the north and west.
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
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 destination.</p>	Yes. The plans submitted with the application clearly indicate multiple accessible and easily identifiable entry points to the building on Lagoon Street and Wellington Street.												
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between	Yes. Vehicular access is provided as a left turn												



	pedestrians and vehicles and create high quality streetscapes?	entry off Lagoon Street and left turn out onto Wellington Street. This minimises conflict between pedestrians and vehicles. The driveways are set within landscaping and do not adversely impact the quality of the streetscape.
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>	The development provides adequate off street car parking and areas that could be used to store bicycles.
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 	78% of the apartments in the building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.
Natural Ventilation	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:	All apartments have natural cross ventilation.



	<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.													
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><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>	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	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	The development complies within the minimum ceiling heights.
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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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>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	All apartments comply with the minimum internal areas.		
Apartment type	Minimum internal area													
Studio	35m ²													
1 bedroom	50m ²													
2 bedroom	70m ²													
3 bedroom	90m ²													



	<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 apartments• 4m 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>																
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	All apartments benefit from adequate private open space areas.
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>	Complies.															
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></td><td></td></tr></table>	Dwelling Type	Storage size volume			Adequate storage areas are provided for all apartments.											
Dwelling Type	Storage size volume																



	<table><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>	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²			
Studio apartments	4m ²											
1 bedroom apartments	6m ²											
2 bedroom apartments	8m ²											
3+ bedroom apartments	10m ²											
	At least 50% of the required storage is to be located within the apartment.											
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	The plant rooms of the development will be suitably insulated to ensure acoustic privacy is maintained for the dwellings of the building.										
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	The development has been designed to mitigate external noise impacts and noise transmission. Bedrooms are located away from street frontages.										
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.	The apartment mix of 1, 2 and 3 bedrooms apartments is satisfactory.										
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	The building facades are contemporary and will compliment the natural environment of the area.										
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.	The roof design is consistent with local development in the area.										
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	The development provides adequate landscape areas and a mix of species that are well established in the local coastal area.										
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes: <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large</td><td>12-18m</td><td>150m³</td><td>1,200mm</td><td>10m x</td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large	12-18m	150m ³	1,200mm	10m x	Adequate soil depth is provided for landscaping within planter boxes.
Plant type	Definition	Soil Volume	Soil Depth	Soil Area								
Large	12-18m	150m ³	1,200mm	10m x								



	Trees	high, up to 16m crown spread at maturity			10m or equivalent
	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent
	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent
	Shrubs			500-600mm	
	Ground Cover			300-450mm	
	Turf			200mm	
Universal Design	Developments are to achieve a benchmark of 20% of the total apartments incorporating the Liveable Housing Guideline's silver level universal design features.				All apartments are universally designed.
Adaptive Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.				N/A
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.				N/A
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.				N/A
Performance					
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?				Yes.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?				Yes.
Waste	Supply waste management plans as part of the				Adequate provisions for



Management	development application demonstrating safe and convenient collection and storage of waste and recycling.	waste storage have been provided.
Building Maintenance	Incorporates a design and material selection that ensures the longevity and sustainability of the building.	The materials and finishes are considered to be suitable for the location and will ensure the longevity of the building.

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:

(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 limitation on the grounds on which a consent authority may grant or modify development consent.

Comment:



SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.850806M dated Wednesday, 20 September 2017).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	35	35

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

SEPP (Housing for Seniors or People with a Disability) 2004

The development application has been lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) as the development is for seniors housing in the form of 11 self contained apartments.

Chapter 1 – Preliminary

The aims of the Policy are set out in Clause 2 and are as follows;

This Policy aims to encourage the provision of housing (including residential care facilities) that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and
- (b) make efficient use of existing infrastructure and services, and
- (c) be of good design.

Comment:

The proposed development is considered to be consistent with the aims of the Policy as set out above for the following reasons:

- (a) The development will increase the supply and diversity of residences that meet the needs of seniors or people with a disability.
- (b) The proposed development also makes efficient use of existing infrastructure and services, in that the site is well serviced by existing public transport and is located within 400m of the nearest bus stop. The site is located approximately 150m from a local retail centre (Narrabeen Shops) which provides a mix of essential retail and commercial services.
- (c) When considering the development against the aim of achieving good design, the development must be considered in context with other provisions of the SEPP.

In particular, that development pursuant to this SEPP is to be of scale and so that is able to fit reasonably within its local context.



In this regard, this assessment has found that the built form of the development maintains a reasonable level of amenity and is compatible with the area in which it will sit. The development does not give rise to any adverse amenity impacts in terms of privacy, view loss or overshadowing and will fit reasonably within its local context.

Chapter 2 – Key Concepts

Comment:

The development comprises *self-contained dwellings*, which are to be occupied by *seniors or people with a disability*. On this basis, it is considered that the proposed development is consistent with Chapter 2 of the SEPP.

Chapter 3 – Development for seniors housing

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development applications made pursuant to SEPP HSPD.

Clause 18 of SEPP HSPD outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. If the application is approved the required condition would need to be included in the consent.

The following is an assessment of the proposal against the requirements of Chapter 3 of SEPP (HSPD).

Development Criteria			
Clause	Requirement	Proposal	Complies
PART 2 - Site Related Requirements			
26(1)	Satisfactory access to: (a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c) the practice of a general medical practitioner	The subject site has satisfactory access to: (a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c) the practice of a general medical practitioner	Yes
26(2)	Access complies with this clause if: (a) the facilities and services referred are located at a distance of not more than 400 metres from the site or (b) there is a public transport service available to the residents not more	The site is within 400 metres walking distance to above mentioned facilities. Approximately 150 metres to 250 metres south and south west of the site are a mix of shops, banks and other retail and commercial services that serve the Narrabeen area. Access to bus stops is via a public pathway along Wellington Street to the	Yes



Development Criteria			
Clause	Requirement	Proposal	Complies
	than 400 metres away.	<p>west too Pittwater Road between 250 metres -350 metres walking distance.</p> <p>Access to these facilities is provided along both Wellington Street and Lagoon Street. It is noted that the western end of Wellington Street is flood prone and does flood in a significant rainfall event which will prohibit access along Wellington Street. In this situation access is still able to be provided along Lagoon Street, which is not flood prone, in accordance with the requirements of this Clause.</p>	
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	The site is not located within bushfire prone land.	N/A
28	Consideration is given to the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.	Given the existing use of the site and documentation provided the site has access to reticulated water and sewerage infrastructure.	Yes
29	<p>Consideration must be given to whether the proposal is compatible with the surrounding land uses having regard to the following criteria specified in Clauses 25(5)(b)(i), 25(5)(b)(iii), and 25(5)(b)(v):</p> <p>i) the natural environment and the existing uses and approved uses of land in the vicinity of the proposed development</p> <p>iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development and any proposed financial arrangements for infrastructure provision,</p> <p>v) the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses,</p>	<p>The development is compatible with the surrounding natural environment and existing residential use of land within the vicinity of the proposed development.</p> <p>The site is served by existing infrastructure (electricity, water and sewerage) that is capable of meeting the demands that will arise from the development.</p> <p>For the reasons outlined within this report, the development is considered to be compatible with the bulk, scale, built form and character of the surrounding area.</p>	Yes



Development Criteria			
Clause	Requirement	Proposal	Complies
	approved uses and future uses of land in the vicinity of the development.		
PART 3 - Design Requirements – Division 1			
30	A site analysis is provided.	A detailed site analysis in plan form and within the Statement of Environmental Effects has been provided which satisfactorily addresses the requirements of this control.	Yes

Clause 31: Design of in-fill self-care housing

Pursuant to Cause 31 in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004.

The provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP HSPD. A detailed assessment of the proposals inconsistencies with regards to the requirements of the Policy is undertaken hereunder.

Section	Requirements	Comment
1. Responding to context	<p>Built Environment – New development is to follow the patterns of the existing residential neighbourhood in terms of built form.</p> <p>Policy environment – Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that contribute to its unique character.</p>	<p>Generally, the built form of the development follows the pattern of the existing residential neighbourhood in terms of built form.</p> <p>Due to the location of the site and its interface with three different land zoning's that envisage and represent vastly different forms of development.</p> <p>The public domain and character of each streetscape is different dependent upon which elevation and which street the building is viewed from.</p> <p>The character of Lagoon Street is predominantly low density with interspersed medium density developments. The character of the streetscape is difficult to define and has the ability to be significantly varied, given the difference in</p>



Section	Requirements	Comment
		<p>zoning dependent upon which side of the street development is located.</p> <p>However, development located on the western side of Lagoon Street, as is the proposed development, is considered to have a predominant built form of buildings that are generally two storeys in appearance. The development generally has a two storey appearance when viewed from Lagoon Street and is therefore appropriate in its built form and in consistent with the built form in the street.</p> <p>The character of Wellington Street is a mix of detached dwelling houses, residential flat buildings and mixed use development and therefore the predominant built form is hard to define. Immediately adjacent to the subject site is a mixed use development that is five storeys at its highest point and presents as a four storey building when viewed adjacent to the subject site.</p> <p>The proposed development at its highest point achieves a height of three storeys. As the site falls to the rear, the development becomes two storeys in height and appears as a two storey building when viewed from the street.</p> <p>Given its location adjacent to a part five/part four storey building to the west, and a three storey building to the west, it is considered the built form provides an appropriate transition between these buildings that defines the public domain and contributes to the character of the Wellington Street streetscape.</p>
2. Site Planning and design	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> Minimise the impact of new development on 	<p>The site is located at the interface of three separate land zoning under WLEP 2011 and therefore the predominant scale in terms of bulk and height is somewhat difficult to define and is different to what is</p>



Section	Requirements	Comment
	<p>neighbourhood character</p> <ul style="list-style-type: none"> Minimise the physical and visual dominance of car parking, garaging and vehicular circulation. 	<p>traditionally expected within a R2 Low Density Residential zone. Further, this development is for a seniors housing development which can be somewhat different to that envisaged in the R2 low density residential area.</p> <p>If the design of the building adopted the scale of the immediately surrounding buildings it would far out way any form of development envisaged for the R2 Low Density Residential zone.</p> <p>The non compliance proposed to Clause 4.3 - Height of Buildings Development Standard and the Building Height Development Standard of SEPP HSPD does not give rise to any unreasonable loss of views, overshadowing or privacy impacts nor does it render the development out of scale with the local context and in particular its surrounding buildings.</p> <p>The development will present to the street in the form of a two storey building when viewed from Lagoon Street and in the form of a part two and part three storey building when viewed from Wellington Street. This visual presentation of the building to these two very different streetscapes is consistent with that of the scale surrounding buildings.</p> <p>The car parking areas are below ground level and not viewable from the street and therefore the visual and physical dominance of these areas are minimised.</p>
3. Impacts on streetscape	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> Minimise impacts on the existing streetscape and enhance its desirable characteristics 	<p>As discussed, the existing streetscape character varies significantly between the two street frontages.</p> <p>The development will present to the street in the form of a two storey building when viewed from Lagoon Street and in the form of a part two</p>



Section	Requirements	Comment
	<ul style="list-style-type: none"> Minimise dominance of driveways and car park entries in streetscape. 	and part three storey building when viewed from Wellington Street. This visual presentation of the building to these two very different streetscapes is consistent with that of the scale surrounding buildings.
4. Impacts on neighbours	The proposal is generally in accordance with the requirements of this section.	<p>The development has been assessed with regards to privacy, overshadowing, view sharing and noise.</p> <p><u>Privacy</u> Generally, the development has been designed having regard to maintaining a reasonable level of acoustic and visual privacy between properties. Appropriate building setbacks and effective use of privacy treatments maintain a reasonable level of privacy to adjoining properties.</p> <p>However, the development includes a second floor balcony area on the northern side of Unit No. 8 which could result in a potential privacy conflict due to its elevated nature and location adjacent to a number of bedrooms located on the southern side of the neighbouring property to the north.</p> <p>Further, the balcony areas of the second floor units contain spa baths. Minimal detail of the size, location and design of the spa baths have been provided with the application. The location of spa baths on the second floor has the potential to cause unreasonable privacy impacts and in the absence of further detail the spa baths are not supported.</p> <p>Notwithstanding, this issue could be resolved through a minor redesign through making this area non-trafficable and landscaped and deletion of the spa baths from the approved plans. Accordingly, conditions have been included in the recommendation of this report to this</p>



Section	Requirements	Comment
		<p>effect.</p> <p>The development will not have any adverse impact on view sharing and satisfies the Planning Principles in Tenacity Consulting v Warringah [2004] NSWLEC 140 and Clause D7 – 'Views' under the WLEP 2011.</p> <p>The development satisfies the requirements and objectives of Clause D3 – 'Noise' and of Clause D8 – 'Privacy' under the WDCP 2011 under the WDCP 2011.</p> <p><u>Overshadowing</u></p> <p>The shadow diagrams provided by the applicant (see Plan No. A11 dated 10 November 2017) indicates that the development will not result in any unreasonable overshadowing over the neighbouring residential properties to the north, south and west.</p> <p>The development satisfies the requirements and objectives of Clause D6 – 'Access to Sunlight' under the WDCP 2011.</p> <p><u>View Sharing</u></p> <p>The development will not have any adverse impact on view sharing and satisfies the Planning Principles in Tenacity Consulting v Warringah [2004] NSWLEC 140 and Clause D7 – 'Views' under the WLEP 2011.</p> <p>The development satisfies the requirements and objectives of Clause</p>
5. Internal site amenity	Objectives of this section are to:	The development is served by lift and stairwell access/egress that provides



Section	Requirements	Comment
	<ul style="list-style-type: none"> Provide safe and distinct pedestrian routes to all dwellings and communal facilities. 	safe and distinct pedestrian routes to all levels of the building and to the communal open space area located on the ground floor.

Clause 32: Design of residential development

In accordance with Clause 32 of SEPP HSPD a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 of Part 2.

The following table outlines compliance with the principles set out in Division 2, Part 3 of SEPP HSPD.

Control	Requirement	Proposed	Compliance
CL33 Neighbourhood amenity and streetscape	a. Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.	<p><u>Location</u></p> <p>The proposed development is located on the corner of Lagoon Street and Wellington Street. The site is at the interface of three different land zones under WLEP 2011.</p> <p>The subject site and land to the north is zoned R2 Low Density Residential, to the south land is zoned B2 Local Centre and to the north on the opposite side of Lagoon Street land is zoned R3 Medium Density Residential.</p> <p><u>Streetscape Character</u></p> <p>As stated above, due to the interface location of the site with three different land zones, the streetscape character and in particular development envisaged for each street varies significantly. The following analysis is provided for each street frontage:</p> <p><i>Lagoon Street</i></p> <p>The character of Lagoon Street is predominantly low density with interspersed medium density</p>	Yes



Control	Requirement	Proposed	Compliance
		<p>developments. The character of the streetscape is difficult to define and has the ability to be significantly varied, given the difference in zoning dependent upon which side of the street development is located.</p> <p>However, development located on the western side of Lagoon Street, as is the proposed development, is deemed to have a predominant built form of buildings that are generally two storeys in appearance. The development generally has a two storey appearance when viewed from Lagoon Street and is therefore appropriate in its built form and in consistent with the built form in the street.</p> <p><i>Wellington Street</i> The character of Wellington Street is a mix of detached dwelling houses, residential flat buildings and mixed use development and therefore the predominant built form is hard to define. Immediately adjacent to the subject site is a mixed use development that is five storeys at its highest point and presents as a four storey building when viewed adjacent to the subject site.</p>	
	b. Retain, complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that are identified in a local environmental plan.	<p>There are no listed heritage items in the vicinity of the site.</p>	N/A
	c. Maintain reasonable neighbour amenity and appropriate	<p>The individual clauses are addressed as follows:</p> <p>(i) providing building setbacks to</p>	Yes



Control	Requirement	Proposed	Compliance
	<p>residential character by;</p> <p>(i) providing building setbacks to reduce bulk and overshadowing</p> <p>(ii) using building form and siting that relates to the sites land form, and</p> <p>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development,</p> <p>(iv) and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours.</p>	<p><i>reduce bulk and overshadowing</i></p> <p><u>Comment:</u> The development provides adequate side and rear setbacks to minimise bulk and overshadowing from neighbouring properties.</p> <p><i>(ii) using building form and siting that relates to the site's land form</i></p> <p><u>Comment:</u> The development has been designed to step down the site to address the east-to-west downward slope.</p> <p><i>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development</i></p> <p><u>Comment:</u> The development provides for building heights at the street frontage which are considered to be compatible in horizontal scale to adjacent development.</p> <p><i>(iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours</i></p> <p><u>Comment:</u> No buildings are located on the boundary.</p>	
	<p>d. Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line,</p>	<p><u>Lagoon Street</u> The development is setback between 5.52m to 6.5m from the front boundary which is sympathetic to the predominant front setbacks on Lagoon Street.</p> <p><u>Wellington Street</u> The development is setback between 1.9m to 3.5m from the front boundary which is sympathetic to the predominant</p>	Yes



Control	Requirement	Proposed	Compliance
	<p>e. embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.</p> <p>f. retain , wherever reasonable, major existing trees, and</p> <p>g. be designed so that no building is constructed in a riparian zone.</p>	<p>front setbacks on Wellington Street.</p> <p>The development includes 337m² (30.7%) deep soil landscaped area which is located around the perimeter of the site, including the front setback area.</p> <p>The areas identified as soft landscaping provide a satisfactory level of landscaping through the provision of trees and shrubs which go some way towards softening the appearance of the development when viewed from the street and neighbouring properties.</p> <p>The development does not retain any large trees.</p> <p>The application was referred to Council's Landscape Officer who did not raise any objection to the removal of the tree subject to replacement plantings as detailed in the Landscape Plan.</p> <p>The site is not located in a riparian zone.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
CL 34 Visual and acoustic privacy	<p>The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by:</p> <p>(a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and</p> <p>(b) Ensuring acceptable noise levels in bedrooms of new dwellings by</p>	<p>Generally, the development has been designed having regard to maintaining a reasonable level of acoustic and visual privacy between properties. Appropriate building setbacks and effective use of privacy treatments maintain a reasonable level of privacy to adjoining properties.</p> <p>However, the development includes a second floor balcony area on the northern side of Unit No. 8 which could result in a potential privacy conflict due to its elevated nature and location adjacent to a number of bedrooms located on the southern side of the neighbouring property to the</p>	<p>Yes subject to conditions.</p>



Control	Requirement	Proposed	Compliance
	locating them away from driveways, parking areas and paths.	<p>north.</p> <p>Further, the balcony areas of the second floor units contain spa baths. Minimal detail of the size, location and design of the spa baths have been provided with the application. The location of spa baths on the second floor has the potential to cause unreasonable privacy impacts and in the absence of further detail the spa baths are not supported.</p> <p>Notwithstanding, this issue could be resolved through a minor redesign through making this area non-trafficable and landscaped and deletion of the spa's from the approved plans. Accordingly, conditions have been included in the recommendation of this report to this effect.</p> <p>The development satisfies the requirements and objectives of Clause D3 – 'Noise' and of Clause D8 – 'Privacy' under the WDCP 2011 under the WDCP 2011.</p> <p>The development satisfies this Principle.</p>	
CL35 Solar access and design for climate	The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and (b) involve site planning, dwelling	<p>The individual clauses are addressed as follows:</p> <p>(a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space,</p> <p><u>Comment</u> Approximately 78% (7 out of 9) of apartments will receive a</p>	Yes



Control	Requirement	Proposed	Compliance
	design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	<p>minimum of two hours direct sunlight between 9am and 3pm in mid-winter.</p> <p>The shadow diagrams provided by the applicant (see Plan No. A11 dated 10 November 2017) indicate that the development will not result in any unreasonable overshadowing over the neighbouring residential properties to the north, south and west.</p> <p>The development satisfies the requirements and objectives of Clause D6 – 'Access to Sunlight' under the WDCP 2011.</p> <p>(b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction</p> <p><u>Comment</u> The development is accompanied by NatHERS Certificates which indicate that the development will a rating of between 4.8 Stars and 7.4 Stars with an average of 5.6 stars under the Nationwide House Energy Rating Scheme which is considered satisfactory for the location of the site.</p> <p>The environmental performance of the development is also guided by the provisions of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. The development is defined under cl.3(1) of the Environmental Planning and Assessment Regulation, 2000 as BASIX Affected Development because it involves the erection of a BASIX Affected Building.</p>	



Control	Requirement	Proposed	Compliance
		<p>A BASIX certificate has been submitted with the application which demonstrates the development will achieve compliance with the minimum targets.</p> <p>Therefore, the development satisfies the requirements of the SEPP.</p>	
CL 36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water re-use.	<p>The applicant has submitted stormwater plans which have been reviewed by Council's Development Engineer.</p> <p>The plans demonstrate that the development could satisfy the provision and management of on-site stormwater. No objection was raised by Council's Development Engineer subject to conditions.</p>	Yes, subject to conditions.
CL 37 Crime prevention	<p>The proposed development should provide personal property security for residents and visitors and encourage crime prevention by:</p> <p>(a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and</p> <p>(b) where shared entries are required, providing shared entries that serve a small number of dwellings that are</p>	<p>The development accommodates 11 units and is therefore not subject to an assessment under the principles of Crime Prevention Through Environmental Design (CPTED).</p> <p>Notwithstanding the above, a CPTED assessment has been provided below:</p> <p>CPTED is a strategy focusing on the planning, design and structure of areas. The concept identifies opportunities for reducing crime through design and place management principles which block opportunities for crime or by making crimes more difficult by creating obstacles or barriers to targets.</p> <p>CPTED employs four key strategies:</p>	Yes



Control	Requirement	Proposed	Compliance
	<p>able to be locked, and</p> <p>(c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.</p>	<p>Access control is a design concept directed primarily at decreasing crime opportunity. It seeks to attract, channel or restrict the movement of people through landscaping, barriers and personnel. Access control can be organised (guards), mechanical (locks) or natural (spatial definition).</p> <p><u>Comment</u></p> <p>The development provides for a non-mechanical and mechanical form of access control to create a defined boundary between the public and private domain.</p> <p>Territorial reinforcement occurs when physical design creates or extends a sphere of influence so that user's develop a sense of proprietorship. Territorial reinforcement can be achieved through design that encourages people to gather in public space and to feel some responsibility for its use and condition; design with clear transitions and boundaries between public and private space; and clear design cues on who is to use the space and what it is used for.</p> <p><u>Comment</u></p> <p>The design of the development includes a main entrance to Wellington Street and balconies to both street frontages which encourages the residents of the</p>	



Control	Requirement	Proposed	Compliance
		<p>building to develop a sense of ownership and responsibility.</p> <p>Natural surveillance is a design concept directed primarily at keeping intruders/offenders under observation. This can be achieved by maximising sightlines, improving lighting and the removal of barriers and hiding spots.</p> <p><u>Comment</u></p> <p>The development permits passive surveillance of the street frontage. The development, particularly at the lower levels, is in full sight of approaching traffic and surrounding development.</p> <p>Space management is linked to the principle of territorial reinforcement. Space management ensures that space is appropriately utilised and well cared for. Examples include: activity coordination, site cleanliness, rapid repair, removal or refurbishment of decayed physical elements. From this perspective, the design of the built environment is critical for the prevention of crime.</p> <p><u>Comment</u></p> <p>The ongoing maintenance of the development is subject to a private arrangement with the body corporate of the development.</p>	
CL 38 Accessibility			



Control	Requirement	Proposed	Compliance
	<p>The proposed development should:</p> <p>(a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and</p> <p>(b) provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.</p>	<p>The development is capable of providing for obvious and safe pedestrian links to the bus stop on Pittwater Road through the provision of a public pathway located adjacent to the main pedestrian entrance to the site which provides a continuous path to the surrounding local facilities and public transport.</p> <p>As discussed earlier within this report the proposal has been largely redesigned from the previous application to improve both the pedestrian and vehicular access arrangements.</p> <p>In particular, the proposal provides an alternative vehicular access arrangement where vehicles enter off Lagoon Street and exit on Wellington Street rather than all access being off Wellington Street.</p> <p>The development provides multiple pedestrian access points on both street frontages compared to the previous proposal which provided pedestrian access on Wellington Street only. This allows for accessible path of travel to services and public transport to be provided along Wellington Street and Lagoon Street.</p> <p>The pedestrian access located on Lagoon Street will allow for vehicles servicing the site (such as removal vans, taxis, ambulances and the like) to park legally on Lagoon Street where on street parking is provided and service the site. Alternatively, these vehicles, where possible and the height of vehicles allows for it, could use the basement as a pick-up/drop-off point.</p> <p>The development provides for a</p>	Yes



Control	Requirement	Proposed	Compliance
		<p>safe environment for pedestrians and motorists with convenient access and parking for residents and visitors.</p> <p>The Access Report submitted with the application confirms that the development is located within an accessible area and that pedestrian routes to services and public transport comply with the requirements of the SEPP.</p>	
CL 39 Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	<p>Waste facilities are provided at ground level and within the basement car park. These facilities have been assessed by Council's Waste Management Officer who did not raise any objection to the proposal.</p> <p>A Waste Management Plan has been provided with the application and accepted by Council's Waste Management Department.</p>	Yes

Part 4 - Development standards to be complied with

Clause 40: Development standards – minimum sizes and building height

Pursuant to Clause 40(1) of SEPP HSPD a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.

The following table outlines compliance with standards specified in Clause 40 of SEPP HSPD.

Control	Required	Proposed	Compliance
Site Size	1,000m ²	1,115m ²	Yes
Site frontage	20 metres	Lagoon Street - 30.48m Wellington Street - 36.575m	Yes
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	8.7m	No - Refer to SEPP 1 Objection below.



Control	Required	Proposed	Compliance
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height.	The development proposes a maximum 3 storeys adjacent to the boundaries of the site.	No - Refer to SEPP 1 Objection below.
	A building located in the rear 25% of the site must not exceed 1 storey in height (development within 15.51 metres of the rear boundary).	N/A - Corner allotment.	N/A

SEPP 1 - Objection to Development Standard - Building Height

The proposed development does not comply with two parts of the Building Height Development Standard. The development does not comply with the building height component which requires that the building height be 8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below). Further, the development does not comply with the number of storeys component of the building height standard which requires that a building that is adjacent to a boundary of the site must not be more than 2 storeys in height.

A SEPP No.1 objection to vary the requirements of Clause 40 – Building Height of SEPP (HSPD) 2004 (prepared by Boston Blyth Fleming and attached to this report as an Appendix) has been submitted with the application. As the SEPP does not provide objectives for the building height control, the applicant's primary submission within the SEPP 1 objection relies upon the objectives of the Warringah Local Environmental Plan 2011 – Clause 4.3 – Height of Buildings Control.

The following assessment of the variation of Clause 40 – Building Height and is assessed taking into consideration the question established in *Winten Property Group Limited V North Sydney Council (2001) NSW LEC 46*.

1. Is the planning control in question a development standard?

The prescribed building height limitation pursuant to Clause 40 of the SEPP is a development standard.

2. What is the underlying object or purpose of the development standard?

Clause 40 – Building Height of the SEPP does not provide any underlying objectives. In this regard, the underlying objectives of the Height of Buildings Development Standard, pursuant to Clause 4.3 – 'Height of Buildings' of the WLEP 2011 are used to determine the suitability of the non-compliance development:



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

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

Comment

The non-compliance occurs through the middle of the building and is only viewable from Wellington Street.

The site is surrounded by a mix of built forms and buildings of varying heights and number of storeys. Because of the location of the non-compliance it does not have any notable impact upon the existing streetscape nor does it detract from its desirable characteristics of the local area.

The building responds to its local context as it will appear predominantly as a two storey building from the Lagoon Street frontage and as a part two and part three storey building from the Wellington Street frontage which is considered appropriate given the varying built forms (including building height and number of storeys) of each street.

As detailed above under CI 33 of SEPP HSPD, the development is considered to be compatible with the height and scale of surrounding and nearby development.

Therefore, the non-compliant element of the development is considered to be consistent with this objective.

to minimise visual impact, disruption or loss of privacy and loss of solar access

Comment

Because of the location of the non-compliance through the middle part of the building and its relationship with surrounding and adjacent development to the south, west and east, the variation will not have any notable visual impact or disruption of views. The development, subject to conditions, maintains a reasonable level of privacy and solar access for adjoining properties.

Therefore the development is considered to be consistent with this objective.

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

Comment

As the non compliance occurs through the middle of the building, the variation will not have and adverse impact on the scenic quality of Warringah's coastal and bush environments and in particular will not be readily viewable from the Narrabeen Lagoon catchment by virtue of sight lines being



obscured by existing development west of the site.

Therefore, the development is considered to be consistent with this objective.

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

Comment:

The visual impact of the development has been appropriately managed by adopting adequate building separation, setbacks and articulation which ensures the development when viewed from nearby public spaces is consistent with that of surrounding and nearby development. The development when viewed from Lagoon Street presents as a two storey built form consistent with adjacent development to the north. When viewed from Wellington Street the development presents as a part two/part three storey built form which is consistent with development to the south and west.

Therefore, the development is considered to be consistent with this objective

In conclusion, a variation to the Building Height Development Standard under SEPP (HSPD) 2004 is supported for reasons outlined above.

3. Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the Act?

The aims of SEPP 1, as stated at clause 3 of the Policy are:

"This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act".

Clause 5(a)(i) and (ii) of the EP&A Act state:

The objects of the Act are:

(a) *"to encourage:*

(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,

(ii) the promotion and co-ordination of the orderly and economic use and development of land"

Compliance with the Building Height Development Standard would not tend to hinder the attainment of the objects specified in Clause 3 of SEPP 1 and Section 5(a)(i) and (ii) of the EP&A Act.



4. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

In this instance, compliance with the Building Height Development Standard is unreasonable.

5. Is the objection well founded?

For the reasons set out above, the proposed variation to the Building Height Development Standard is well founded and supported.

Clause 41: Standards for hostels and self contained dwellings

In accordance with Clause 41 a consent authority must not consent to a development application made pursuant to Chapter 3 unless the development complies with the standards specified in Schedule 3 for such development. The following table outlines compliance with the principles set out in Schedule 3 of SEPP HSPD.

The application is supported by an Access Report (refer to Access Report prepared by Accessible Building Solutions dated 16/08/2017) that demonstrates the development is capable of requiring with the requirements of Clause 41.

In this regard, compliance with the recommendations and requirements contained within the Access Report is included as a condition of consent in the recommendation of this report.

Clause 50: Standards that cannot be used to refuse development consent for self-contained dwellings

In accordance with Clause 50 of SEPP HSPD a consent authority must not refuse consent to a development application made pursuant to Chapter 3 for the carrying out of development for the purpose of a self contained dwelling on any of the grounds listed in Clause 50.

The following table outlines compliance with standards specified in Clause 50 of SEPP HSPD.

Control	Required	Proposed	Compliance
Building height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	8.7m	No (See discussion above under Clause 40)
Density and scale	0.5:1 (557.5m ²)	Applicant: 0.99:1 (1,111.6m ²) Assessment: 1.09:1 (1,222.64m ²)	No Applicant: +0.49:1 (+554.1m ²) Assessment: +0.59:1 (+665.14m ²) The 0.5:1 floor space ratio is considered by the SEPP and its



Control	Required	Proposed	Compliance
			<p>supporting 'Seniors Living Policy; Urban Design Guidelines for Infill Development', dated 2004 as published by the Department of Infrastructure, Planning and Natural Resources, to be the optimum building-to-site area ratio to minimise the impact of new development on neighbourhood character.</p> <p>The development proposes a floor space ratio of 0.99:1 which exceeds the SEPP allowance by 554.1m². This assessment has estimated the floor space ratio to be closer to 1.09:1 which exceeds the SEPP allowance by 665.14m².</p> <p>Notwithstanding this difference, as identified under Clause 33 of this SEPP and Design Principles 1 to 4 under the <i>State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development</i>, the development is considered to be consistent with the neighbourhood character of the local area.</p>



Control	Required	Proposed	Compliance
			<p>For example, the properties listed below, which are located in the local area surrounding the site, achieve the following FSR:</p> <ul style="list-style-type: none"> • 20 Wellington Street: 1.55:1 • 13 Wellington Street: 0.6:1 • 29 Wellington Street: 1:1 <p>In this regard, the proposed floor space ratio of the development is considered to be appropriate for the site and its context and is considered to be acceptable.</p>
Landscaped area	30% of the site area is to be landscaped	30% (337m ²)	Yes
Deep soil zone	15% of the site area Two thirds of the deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.	15.3% (171.5m ²)	Yes
Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid	Approximately 78% of apartments will receive a minimum of two hours direct sunlight between 9am and 3pm in mid-winter.	Yes



Control	Required	Proposed	Compliance
	winter		
Private open space	15m ² of private open space per dwelling not less than 3 metres long and 3 metres wide	The development provides appropriate areas of private open space to each apartment.	All apartments are provided with adequate private open space areas. Two apartments provide private open space areas that are less than 15 sqm however these apartments, like all others, have the benefit of communal open space on site which combined with their individual provisions of private open space is considered to be adequate.
Parking	(19 bedrooms proposed – 11 car parking spaces required)	The development provides for 18 parking spaces in total.	Yes
Visitor parking	None required if less than 8 dwellings	<p>The development, as lodged, does not provide for dedicated visitor car parking areas.</p> <p>However, the development is capable, by virtue of the dimensions of the basement car parking area, of providing 2 visitor car spaces without reducing the total number of car spaces allocated to each apartment.</p> <p>In this regard, a condition which requires the visitor spaces to be clearly allocated and marked out has been included in the</p>	Yes, subject to conditions.



Control	Required	Proposed	Compliance
		recommendation of this report.	

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	9.24m	8.7%	No (see Clause 4.6 section of this report and SEPP 1 under SEPP HPSP section of this report)

Compliance Assessment

Clause	Compliance with Requirements



Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.9AA Trees or vegetation not prescribed by development control plan	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.3 Flood planning	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:	9.24m
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	8.7%

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?

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

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

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

Comment:



The non-compliance occurs through the middle of the building. The site is surrounded by a mix of built forms and buildings of varying heights and number of storeys. Because of the location of the non-compliance it does not have any notable impact upon the existing streetscape nor does it detract from its desirable characteristics of the local area.

The building responds to its local context as it will appear predominantly as a two storey building from the Lagoon Street frontage and as a part two and part three storey building from the Wellington Street frontage which is considered appropriate given the varying built forms (including building height and number of storeys) of each street.

As detailed above under CI 33 of SEPP HSPD, the development is considered to be compatible with the height and scale of surrounding and nearby development.

Therefore, the non-compliant element of the development is considered to be consistent with this objective.

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

Comment:

Because of the location of the non-compliance through the middle part of the building and its relationship with surrounding and adjacent development to the south, west and east, the variation will not have any notable visual impact or disruption of views. The development, subject to conditions, maintains a reasonable level of privacy and solar access for adjoining properties.

Therefore the development is considered to be consistent with this objective.

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

Comment:

As the non compliance occurs through the middle of the building, the variation will not have and adverse impact on the scenic quality of the coastal and bush environments and in particular will not be readily viewable from the Narrabeen Lagoon catchment by virtue of sight lines being obscured by existing development west of the site.

Therefore, the development is considered to be consistent with this objective.

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

Comment:

The visual impact of the development has been appropriately managed by adopting adequate building separation, setbacks and articulation which ensures the development when viewed from nearby public spaces is consistent with that of surrounding and nearby development. The development when viewed from Lagoon Street presents as a two storey built form consistent with adjacent development to the north. When viewed from Wellington Street the development presents as a part two/part three storey built form which is consistent with development to the south and west.

Therefore, the development is considered to be consistent with this objective.



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 the R2 Low Density Residential zone:

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

Comment:

The proposal provides a form of seniors housing which will serve the housing needs for aged community members within the existing low density residential environment.

It is considered that the development satisfies this objective.

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

Comment:

The development allows for other land uses within the local area to continue to provide facilities or services that meet the day to day needs of current and future residents.

It is considered that the development satisfies this objective.

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

Comment:

The proposal includes substantial areas of landscaping located around the perimeter of the site and at each street frontage which provides a suitable landscape setting that is in harmony with the natural environment of the locality.

It is considered that the development satisfies this objective.

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.

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

Comment:

The proposed variation to the development standard is consistent with objectives of this Clause



as it provides an appropriate degree of flexibility in applying the Height of Buildings Development Standard to the development.

The development allows for a new form of residential accommodation to be provided within the existing low density residential area. The site is burdened by a flood planning level which impacts on the overall height of the building. Notwithstanding this the development does not result in any unreasonable visual or physical impacts on surrounding and nearby development.

(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 Applicants written request is attached to this report as an Appendix.

As detailed throughout this Clause, the assessment of the proposed variation against the provisions of this Clause generally concurs with the reasons provided by the applicant.

The variation proposed to the Height of Buildings Development Standard does not result in unreasonable visual or physical impacts on surrounding and nearby development or when viewed from the public domain.

Further, the development is considered to be compatible with the height and scale of surrounding and nearby development

For these reasons the variation is supported in this instance.

(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 applicants written request (prepared by Boston Blyth Fleming) 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 WLEP 2011.

(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 Height of Buildings Development Standard is assumed as the variation is less than 10%.

Warringah Development Control Plan

Built Form Controls

Relevant Built Form Control	Requirement	Proposed	% Variation*	Complies
B3 Side Boundary Envelope	4m and 45°	North: Within envelope West: Within envelope	N/A N/A	Yes Yes
B5 Side Boundary Setbacks	0.9m	West: 6.83m basement 6m ground floor 6m to first floor 7.15m to second floor North: 4.1m to basement 4.95m to ground floor 4.95m to first floor 4.95m to second floor	N/A N/A N/A N/A N/A N/A N/A N/A	Yes Yes Yes Yes Yes Yes Yes Yes
B7 Front Boundary Setbacks - Primary Street Frontage (Lagoon Street)	6.5m	2.54m to basement 6.5m to ground floor 5.52 to first floor 6.5m to second floor	60.9% N/A 15% N/A	No Yes No Yes
B7 Front Boundary Setbacks - Secondary Street Frontage (Wellington Street)	3.5m	3.55m to basement 3.5m to ground floor 1.9m to first floor 3.5m to second floor	N/A N/A 45.7% N/A	Yes Yes No Yes
B9 Rear Boundary Setbacks	6m	N/A - Corner allotment, rear setbacks do not apply	N/A	N/A



D1 Landscaped Open Space (LOS) and Bushland Setting	N/A - Provision of Landscaped Open Space is covered under SEPP HSPD	N/A	N/A	N/A
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Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	N/A	N/A
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking 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	N/A	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
E8 Waterways and Riparian Lands	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
Appendix 1 Car Parking Requirements	Yes	Yes

Detailed Assessment

B7 Front Boundary Setbacks

Description of non-compliance

The control requires development to be setback a minimum of 6.5m from the primary street frontage (Lagoon Street) and a minimum 3.5m setback from the secondary street frontage (Wellington Street).

The development provides the following front setbacks:

Primary Street Frontage (6.5m) - Lagoon Street:

- 2.54m to basement (variation of 60.9% or 3.96m)
- 5.52m to first floor (variation of 15% or 0.98m)

Secondary Street Frontage (3.5m) - Wellington Street:

- 1.9m to first floor (variation of 45.7% or 1.6m)

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 openness.*

Comment:

The variations to the control are considered to be minor in nature and relate to the first floor balconies which are open features of the building. In this regard, the development will maintain a sense of openness across the site.

The basement level is below the ground level and not viewable from the street and therefore does not impact on the openness achieved across the front boundary setback areas.

The development satisfies this objective.

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

Comment:

The non compliance relates specifically to the first floor balconies.



The front boundary setback at ground level provides landscape elements which are consistent with that of surrounding developments. The balconies add to the overall articulation of the facade of the building to soften the visual appearance of the building.

As mentioned above, the basement level is located below ground level and not readily viewable from the street with landscaping areas provided above.

In this regard, the development maintains the visual continuity and pattern of buildings and landscape elements.

The development satisfies this objective.

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

Comment:

The balconies add to the articulation of the development and soften the visual appearance when viewed from the street and adjoining public spaces. The non compliance does not result in any unreasonable impacts on the Lagoon Street or Wellington Street streetscapes.

The development satisfies this objective.

- *To achieve reasonable view sharing.*

Comment:

The variations are considered to be minor and will not have any unreasonable impact upon the sharing of views from surrounding development.

The development satisfies this objective.

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 \$ 5,470,194		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 51,967
Section 94A Planning and Administration	0.05%	\$ 2,735
Total	1%	\$ 54,702

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 Council as the consent authority grant Development Consent to DA2017/1137 for Demolition works and construction of a seniors living development on land at Lot B DP 383293, 22 Lagoon Street, NARRABEEN, Lot A DP 383293, 24 Lagoon 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
A02	10/11/2017	Barry Rush & Associates Pty Ltd
A03	10/11/2017	Barry Rush & Associates Pty Ltd
A04	10/11/2017	Barry Rush & Associates Pty Ltd
A05	10/11/2017	Barry Rush & Associates Pty Ltd
A06	10/11/2017	Barry Rush & Associates Pty Ltd
A07	10/11/2017	Barry Rush & Associates Pty Ltd
A08	10/11/2017	Barry Rush & Associates Pty Ltd
A09	10/11/2017	Barry Rush & Associates Pty Ltd
A12	10/11/2017	Barry Rush & Associates Pty Ltd
A13	13/09/2017	Barry Rush & Associates Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment	July 2014	Urban Forestry Australia
Geotechnical Investigation	1/07/2014	Taylor Geotechnical Engineering
Statement of Compliance Access for People with Disability (Revision A)	16/08/2017	Accessible Building Solutions
BCA Assessment Report (Revision 1)	20/09/2017	Blackett Maguire + Goldsmith
Flood Study and Risk Management Plan	Unknown	AKY Civil Engineering

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
Landscape Site Plan	10/11/2017	Trish Dobson Landscape Architecture
Second Floor Plan, Tree Retention + Details	10/11/2017	Trish Dobson Landscape Architecture

Waste Management Plan		
Drawing No.	Dated	Prepared By
Waste Minimisation and Management Plan	Unknown	Barry Rush & Associates Pty Ltd

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:

- o The spa baths shown on the second floor plan serving Unit 8 and Unit 9 (refer to plan No. A05 dated 11/11/17 prepared by Barry Rush and Associates) are to be deleted.

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. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Water NSW	Response Water NSW Referral	28 March 2018

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

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other Department, Authority or Body's. (DACPLB02)

4. Prescribed Conditions



- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal 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)

5. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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)

6. **Occupation of Seniors Housing or Housing for Persons with a Disability**

A positive covenant pursuant to s88E of the Conveyancing Act 1919 is to be registered on the title of the land to which this development consent applies.

The covenant shall stipulate that Council is the sole authority to release or modify the covenant and that the development is only permitted to be occupied by persons detailed as follows:

- (a) seniors or people who have a disability



- (b) people who live within the same household with seniors or people who have a disability;
- (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.

(Note: Under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004):

Seniors are people aged 55 or more years, people who are resident at a facility at which residential care (within the meaning of the Aged Care Act 1997 <http://www.comlaw.gov.au/> of the Commonwealth) is provided and / or people who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider.

AND

People with a disability are people of any age who have, either permanently or for an extended period, one or more impairments, limitations or activity restrictions that substantially affect their capacity to participate in everyday life.)

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue any Interim / Final Occupation Certificate.

Reason: Statutory requirements. (DACPLB11)

7. **Visitor spaces located behind security shutter/ door**

An intercom system is required to be installed to enable visitor access into the basement parking area.

Reason: To ensure visitor car parking is accessible to visitors (DACTRBOC1)

8. **Signposting Parking Spaces**

All parking spaces are to be line marked or signposted in compliance with the Australian Standards.

Reason: Compliance with Australian Standards (DACTRBOC2)

FEES / CHARGES / CONTRIBUTIONS

9. **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 \$ 5,470,194.00			
Contributions	<table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">Levy</td><td style="width: 50%;">Payable</td></tr> </table>	Levy	Payable
Levy	Payable		



	Rate	
Total Section 94A Levy	0.95%	\$ 51,966.84
Section 94A Planning and Administration	0.05%	\$ 2,735.10
Total	1%	\$ 54,701.94

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.

10. 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.

11. Works Bonds

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

A Bond of \$1000 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each 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 Councils infrastructure. (DACENZ01)

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

12. Pump-Out System Design for Stormwater Disposal

The design of the pump-out system for stormwater disposal will be permitted for drainage of basement areas only, and must be designed in accordance with Council's Stormwater Drainage Policy. Engineering details demonstrating compliance with this requirement and certified by an appropriately qualified and practising hydraulic engineer.

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

Reason: To ensure adequate provision is made for the discharge of stormwater from the excavated parts of the site. (DACENC04)

13. Stormwater Disposal

Plans indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments, shall be submitted prior to the issue of the Construction Certificate. The plans must indicate the provision of a rainwater tank in accordance with the BASIX certificate.

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

Reason: To ensure appropriate provision for disposal and stormwater management and compliance with the BASIX requirements, arising from the development. (DACENC07)

14. Vehicle Crossings Application Formwork Inspection

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.

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

Reason: To facilitate suitable vehicular access to private property. (DACENC12)

15. Vehicle Driveway Gradients

Driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in Council's Minor Works Policy.

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

Reason: To ensure suitable vehicular access to private property. (DACENC13)

16. Waterproofing/Tanking of Basement Level

The basement area is to be permanently tanked or waterproofed. Details of the waterproofing/



tanking are to be prepared by a suitably qualified Engineer.

Where dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Department of Primary Industries - Water. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Department of Primary Industries - Water are to be complied with and a copy of the approval must be submitted to the Certifying Authority.

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

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements. (DACENC14)

17. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required.

All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: Safety. (DACENC19)

18. **Shoring of Adjoining Property**

Should the proposal require shoring to support an adjoining property or Council land, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings. Council approval is required if temporary rock anchors are to be used within Council land.

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

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land. (DACENC05)

19. **Waste Management Plan**

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

Details demonstrating compliance must be provided to the 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.



20. **Flood**

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

Flood Storage

A report from a suitably qualified engineer is required to certify that there is no net loss of flood storage in the 1% AEP event. The report must include calculations to confirm that no net loss has been achieved.

Building Components and Structural Soundness – C1

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

Building Components and Structural Soundness – C2

All new development must be designed and constructed to ensure structural integrity up to the Probable Maximum Flood level of 4.9m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion. Structural certification shall be provided confirming the above.

Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 3.5m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed cut electricity supply during flood events.

Storage of Goods – D1

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

Flood Emergency Response – E2

Appropriate access to the shelter in place refuge should be available from all areas of the new development.

Floor Levels – F7

New floor levels within the development shall be set at or above the Probable Maximum Flood Level of 4.9m AHD.

Car parking – G3

All access, ventilation and any other potential water entry points, including entry ramp crests to the basement car park shall be at or above the Flood Planning Level of 3.5m AHD.

Recommendations

The development must comply with all recommendations outlined in:
The Flood Management Report prepared by AKY Civil Engineering

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy. (DACNEC09)



21. **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)
22. **Privacy**
The balcony area located on the northern side of Unit No. 8 on the second floor is to be made non-trafficable and landscaped.
- The planter box is to be extended for the entire length of the northern edge of the balcony.
- Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.
- Reason: In order to maintain privacy to the adjoining / nearby property and to improve internal amenity. (DACPLC06)
23. **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:
- o Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
 - o Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
 - o Or telephone 13 20 92.
- Reason: To ensure compliance with the statutory requirements of Sydney Water. (DACPLC12)
24. **Requirements for Seniors Housing or Housing for Persons with a Disability**
The development is for the purposes of Seniors Housing or Housing for Persons with a Disability and is required to comply with all the standards specified in Schedule 3 - "*Standards concerning accessibility and useability for hostels and self-contained dwellings*".
- Details demonstrating compliance with the above requirement are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.
- Reason: To ensure public safety and equitable access for seniors or people with a disability. (DACPLC16)
25. **Dilapidation Report**
A photographic survey of adjoining property (being No. 26 Lagoon Street) detailing the physical condition of the property, both internally and externally, including such items as walls, ceilings,



roof, structural members and other similar items, SHALL BE submitted to Council/Accredited Certifier prior to the issue of a Construction Certificate. This survey is to be prepared by an appropriately qualified person.

On completion of the excavation and building works and prior to occupation of the building, a certificate prepared by the appropriately qualified person to the effect that no damage has resulted to adjoining premises, is to be provided to the Principal Certifying Authority.

If damage is identified by the appropriately qualified person which is considered to require rectification, the damage shall be rectified or a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible and prior to a final Occupation Certificate being issued.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant MUST DEMONSTRATE, in writing, to the satisfaction of Council/Accredited Certifier that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed.

(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: Proper management of records and protection of private property assets. (DACPLCPCC1)

26. **Pedestrian Sight Distance**

A clear sight line of minimum dimension 2.0m by 2.5m is to be provided at the vehicle exit point to pedestrians on the adjoining footpath.

Reason: Compliance with Australian Standards AS2890.1:2004(DACTRCPPCC1)

27. **Visitor Parking**

Two (2) parking space is to be allocated to visitor parking. Visitor spaces are to be line marked or signposted in accordance with Australian Standards.

Reason: minimize parking impact on public roads and compliance with Australian Standards (DACTRCPPCC2)

28. **Waste and Recycling Requirements**

Details demonstrating compliance with Warringah Development Control Plan – Part C9 Waste Management, including the required Warringah Waste Management Plan, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with Warringah Development Control Plan – Part C9 Waste Management, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans a modification(s) to the development may be required.

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



(DACWTC01)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

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

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

30. **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)

31. **Construction Management Plan**

A Construction Management Plan which includes a Traffic Control Plan is to be prepared by a suitably qualified traffic engineer or consultant that demonstrates all construction vehicles are to be contained entirely on the site, for use during demolition, excavation and construction works including the loading and unloading of materials.

The Construction Management Plan must identify any potential disruption to traffic flow on Lagoon Street, Wellington Street and surrounding roads and provide mitigation measures. The plan should also include a mechanism to avoid queuing of construction traffic on local roads.

The Construction Management Plan must identify any potential disruption to pedestrian access and flow around the site, safe pedestrian access is to be maintained at all times during demolition, excavation and construction works. Any measures to be implemented to ensure the above is to be included in the plan.



The need for a work zone adjacent to the site frontage in Lagoon Street is to be considered as part of the construction management plan. (The provision of a work zone will require approval by Council, applications for work zones and should be lodged at least 4 weeks prior to work commencing).

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works.

Reason: To ensure works vehicles do not impact on parking, traffic flows and pedestrian thoroughfares.

32. Storage Areas

The storage area is to be increased to achieve a total area of 72m².

Individual storage areas are to be provided for each residential apartment. Storage areas within the basement are to be clearly defined.

Reason: To ensure adequate storage areas are provided. (DACPLCPCC4)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

33. Surveyor's Report

A Registered Surveyor's identification report indicating the finished ground floor levels to a nominated fixed datum point are in accordance with the levels indicated on the approved plans. A Surveyor's Report is to be provided for confirmation prior to pouring of the slab or construction of the floor platform.

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

Reason: To ensure the height of buildings under construction comply with levels shown on approved plans. (DACENE04)

34. Vehicle Crossings

The provision of 2 vehicle crossing 3.0 metres wide in accordance with Warringah Council Drawing No A4-3330/1N 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. The driveway access to basement shall be 500mm above the flood level.

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

Reason: To facilitate suitable vehicular access to private property. (DACENE05)

35. 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)

36. **Layback Construction**

A 3.0m wide layback (excluding wings) is to be constructed at the entry and exist points of the proposed driveway in accordance with Warringah Council Drawing No A4-2276 and specifications.

Reason: To ensure suitable vehicular access to private property. (DACENE08)

37. **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)

38. **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.

39. **Requirement to Notify about New Contamination Evidence**

Any new information revealed during demolition works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.

Reason: To protect human health and the environment. (DACHPE01)

40. **Acid Sulphate Soils**

Details and recommendations made by the consultant in the Acid Sulphate soil assessment titled Geotechnical Investigation Proposed residential Unit Development Dated 1 July 2014 project no. TGE21424 must be implemented to ensure compliance is met.

Reason: To ensure management of potential acid sulfate soils. (DACHPEDW1)

41. **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. (DACLAEO3)

42. **Protection of rock and sites of significance**

a) All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

b) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features (DACLAEOG1)

43. **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**

44. **Authorisation of Legal Documentation Required for On-site Stormwater Detention**

The original completed request forms (Department of Lands standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works.

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

Reason: To create encumbrances on the land. (DACENF01)

45. **Reinstatement of Kerb**

All redundant laybacks and vehicular crossings shall be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

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

A Positive Covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the property title to ensure the on-going maintenance of the stormwater pump-out facilities on the property being developed.

Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these



documents prior to the submission to the Land & Property Information Department.

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 adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard. (DACENF11)

47. **Creation of Positive Covenant and Restriction as a User**

Where any conditions of this Consent require the creation of a positive covenant and/or restriction as a user, the original completed request forms, (Department of Lands standard forms 13PC and/or 13RPA), shall be submitted to Northern Beaches Council for authorisation.

A certified copy of the documents shall be provided to Northern Beaches Council after final approval and registration has been affected by the "Department of Lands".

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Interim / Final Occupation Certificate.

Reason: To identify encumbrances on land. (DACENF14)

48. **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 Site Plan Dwg No. DA-L01 dated 10.11.17 prepared by Trish Dobson Landscape Architecture	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)

49. **Creation of Positive Covenant and Restriction as a User**

A restriction on the use of land and a positive covenant shall be created on the title of the land in respect of the wall on the western side of the property that is designed to protect the basement car park from flooding up to 3.5m AHD. The detailed information for a restriction on the use of land and a positive covenant is shown in Northern Beaches Council's WATER MANAGEMENT POLICY PL850, .

The terms of the positive covenant and a Restriction on the use of land are to be prepared to Council's standard requirements, at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

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

Reason: To ensure the wall at the western side of the property to protect the basement car park from flooding is not removed or modified.



50. **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)

51. **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)

52. **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.

53. **Certification of completion of requirements for Seniors Housing or Housing for Persons with a Disability**

Details demonstrating that all stipulated requirements of this development consent for Seniors Housing or Housing for Persons with a Disability have been completed.

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 statutory requirements have been completed, public safety, and equitable access for seniors of people with a disability. (DACPLF12)

54. **Basement Ventilation**

The basement is required to be mechanically vented, which is to be discharged to the roof top and not adjacent any adjoining property boundary or private open space.

Details to be provided to the satisfaction of the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate ventilation of the car park and to protect amenity. (DACPLCPCC6)

55. **Registration of Encumbrances for Flood Protection Wall**

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for the flood protection wall as to user is to be submitted. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land.

56. **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)

57. **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)

58. **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)

59. **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

60. **Requirement to notify about new evidence of Acid Suplphate Soils**

Any new information revealed during the excavation that has the potential to alter previous conclusions outlined in report titled Geotechnical Investigation Proposed residential Unit Development Dated 1 July 2014 project no. TGE21424 shall be immediately notified to the Council and the Principal Certifying Authority.

Reason: To protect human health and the environment (DACHPGOG1)

61. **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

62. **Allocation of Spaces**

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

- 16 - Residential
- 2- 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.

Each apartment shall have at least one allocated car space. Tandem spaces are to be allocated to individual apartments.

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)

63. **Loading Within Site**

All loading and unloading operations shall be carried out wholly within the confines of the site and within the approved loading areas, at all times.

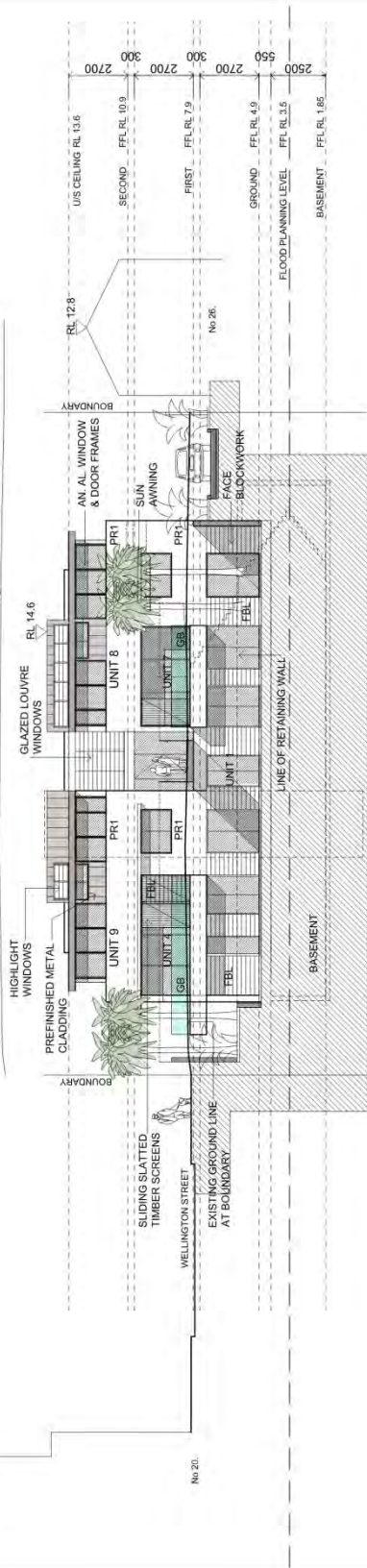


Reason: To ensure that deliveries can occur safely within the site and does not adversely affect traffic or pedestrian safety and amenity. (DACPLG20)



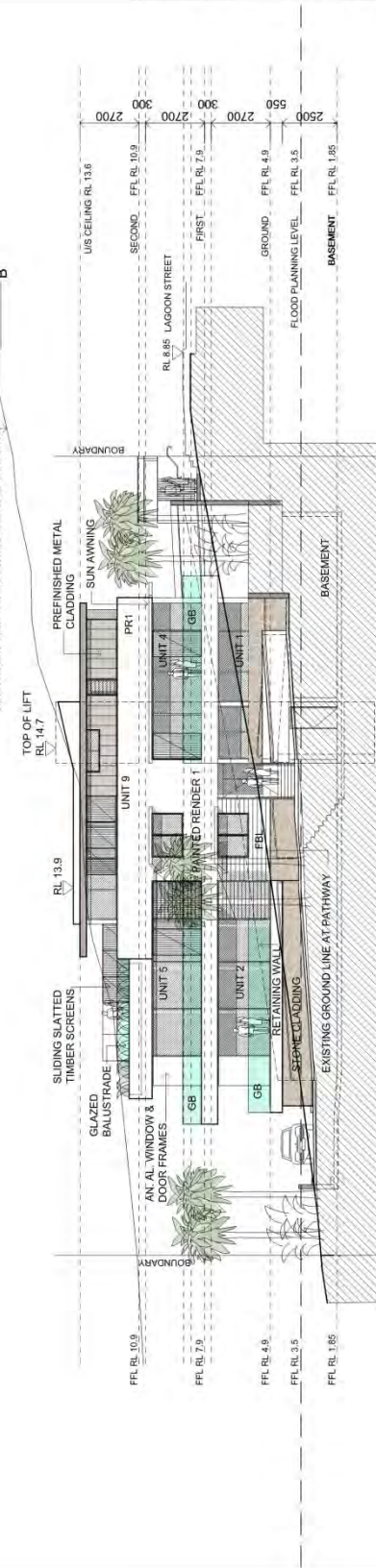
LEGEND

8.5m HEIGHT LINE - AT EASTERN FACE OF BUILDING



EAST ELEVATION (FACING LAGOON STREET)

8.5m HEIGHT LINE - AT SOUTHERN FACE OF BUILDING



SOUTH ELEVATION (FACING WELLINGTON STREET)

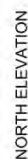
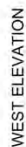
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GRAEME BRIDGES
Client

Project
22-24 LAGOON STREET
HARRAREEN
LOTS A & B IN DP 303293

ELEVATIONS
EAST & SOUTH

Scale: 1:100
Date: 22-24 LAGOON STREET
Job No: 1733
Version: DA
Drawing No: A07
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**Objections Pursuant to State Environmental Planning Policy No. 1
Proposed Seniors Living Development
Clauses 40(4)(a) and 40(4)(b) of SEPP HSPD
22 – 24 Lagoon Street, Narrabeen**

Background

This objection under State Environmental Planning Policy No 1 - Development Standards ("SEPP No 1") has been prepared in relation to a development application for consent to carry out a development involving the construction and strata subdivision of a seniors living development pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 ("SEPP HSPD").

The provisions of SEPP No. 1 are applicable to development standards prescribed under an Environmental Planning Instrument pursuant to the Environmental Planning and Assessment Act, 1979.

This objection is prepared on the basis that the height of the development exceeds the 8 metre building height standard contained at Clause 40(4)(a) and the 2 storey standard at clause 40(4)(b) of SEPP HSPD.

The Provisions of SEPP No 1

State Environmental Planning Policy No 1 - Development Standards is a State Policy mechanism available to applicants to seek variation of development standards contained within in an environmental planning instrument.

Necessary Form and Detail Required in a SEPP No 1 Objection

In accordance with the provisions of SEPP No. 1 and decisions in *Hewitt v Hurstville Council* (2001) NSWLEC 294 (21 December 2001), *Winten Property Group Limited v North Sydney Council* (2001) NSWLEC 46, *Hooker Corporation Pty Limited v Hornsby Shire Council NSW LEC*, 2 June 1986, unreported, and *Wehbe v Pittwater Council* [2007] NSWLEC 827 an objection pursuant to SEPP No. 1 requires consideration of the following matters:

1. What is the planning control to be varied and is it a development standard?
2. What is the underlying object or purpose of the standard?
3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?
4. Is compliance with the standard consistent with the aims of the policy, and in particular does compliance with the standard tend to hinder the attainment of the objects specified in section 5a(i) and (ii) of the EP&A Act?
5. Is the objection well founded?

The following section of this submission will detail the consideration of these matters.

1. What is the planning control to be varied and is it a development standard?

The SEPP No. 1 objection has been prepared on the basis that the proposal does not comply with clauses 40(4)(a) and (b) of SEPP HSPD namely:

40(4) Height in zones where residential flat buildings are not permitted

If the development is proposed in a residential zone where residential flat buildings are not permitted:

- (a) the height of all buildings in the proposed development must be 8 metres or less, and*
- (b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and*

I have formed the opinion that the control is a development standard and not a prohibition in relation to development. Accordingly the provisions of SEPP 1 apply.

2. What is the underlying object or purpose of the standard?

There is no stated objective of clause 40(4)(a) however assistance is obtained from the objectives associated with the height of buildings standard at Clause 4.3 of WLEP 2011 namely:

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

Further, the Note associated with clause 40(4)(b) states that the purpose of the clause is to avoid an abrupt change in the scale of development in the streetscape.

3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

I note that for the purpose of clause 40(4)(a) height is defined as follows:

height in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.

In this regard I confirm that the only non-compliant portion of the building in terms of building height in metres is the lift overrun and predominately the roof element. The proposed development exceed the 8m standard approximately 900mm at its highest point. The balance of the development sits comfortably below the 8 metre height control. The relatively minor non-compliance can be directly attributed to the architectural desire to maximise solar penetration into the upper level apartments through the provision of an east facing clearstory window and site topography.

Whilst there are no stated objectives associated with such standard an assessment against the clause 4.3 WLEP Building height objectives is as follows:

- The non-compliance is appropriately described as minor. The height, bulk and scale of the building is compatible with the height and scale of surrounding and nearby development;
- The height of the building does not give rise to any unacceptable residential amenity impacts in terms of privacy or solar access;
- The height of the development will not give rise to adverse impact on the scenic quality of Warringah's coastal and bush environments with the building not being readily discernible as viewed from Narrabeen Lakes or its immediate environs due to intervening built form and landscape elements;
- The height of the development will not be perceived as inappropriate or jarring in its context as viewed from public places such as parks and reserves, roads and community facilities.
- The view sharing scenario is maintained to the north facing apartments within "Pacific Rivage" at No. 20 Lagoon Street to the south of the development site towards Narrabeen Lakes and its immediate environs having regard to the Planning Principle established in the matter of Tenacity Consulting v Warringah [2004] NSWLEC 140.
- Consistent with the conclusions reached by the Senior Commissioner in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, we have formed the considered opinion that most observers would not find the proposed development offensive, jarring or unsympathetic to

the Lagoon or Wellington Street streetscapes or the built form characteristics of development within immediate proximity of the site.

Such outcome satisfies the implicit objectives of the 8 metre building height standard.

In relation to storeys I confirm that the development is 3 storeys as defined and accordingly non-compliant with the clause 40(4)(b) 2 storey standard. I note that the stated purpose of the clause is to avoid an abrupt change in the scale of development in the streetscape.

Due to the topography of the site the development presents as a 2 storey building form to Lagoon street and a stepped 2 storey building form to Wellington Street as depicted on the accompanying building elevations.

The height and form of the building will not be perceived as inappropriate or jarring in its context with the setbacks and provision of landscaped curtilage around the perimeter of the site ensure that the development maintains the characteristic scale and rhythm of development in a streetscape context. Such outcome satisfies the stated purpose of the standard

4. Is compliance with the standard consistent with the aims of the policy, and in particular does compliance with the standard tend to hinder the attainment of the objects specified in section 5a(i) and (ii) of the EP&A Act?

The aims/ objectives of SEPP 1 are to provide flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act namely:

“to encourage:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and*

villages for the purpose of promoting the social and economic welfare of the community and a better environment,

- (ii) *the promotion and co-ordination of the orderly and economic use and development of land,”*

Given the absence of unacceptable streetscape impacts, the paucity of adverse residential amenity impacts and the compatibility of the development in its context I have formed the considered opinion that the proposed works are consistent with the objectives of the clause 40(4)(a) and (b) Height of Buildings standards and not antipathetic to the public interest.

Strict compliance with the building height control would result in a significant amenity impact to the upper floor apartments by limiting its potential to provide a quality accessible seniors living apartments. Strict compliance with the 8m standard would not result in a corresponding improvement to the amenity of neighbouring properties or the streetscape generally.

Such outcome would be inconsistent with sections 5a(i) and (ii) of the EP&A Act particular in a case where it has been found that strict compliance is both unreasonable and unnecessary under the circumstances.

5. Is the objection well founded?

Having regard to the matter of *Veloshin v Randwick City Council* [2007] NSWLEC 428 this is not a case where the difference between compliance and non-compliance is the difference between good and bad design.

It can be demonstrated that notwithstanding the non-compliance that the stated objectives of the standards are achieved and accordingly strict compliance is both unreasonable and unnecessary under the circumstances.

The development provides for the orderly and economic use of the land in accordance with the applicable environmental planning control regime. Accordingly, it is clear that the objectives of Section 5(a)(i) and (iii) of the Environmental Planning and Assessment Act have been met in this instance.

In my opinion the objections are well founded.

Conclusion

It has been determined that strict compliance with the development standards contained at clauses 40(4)(a) and (b) of SEPP HSPD is unreasonable and unnecessary having regard to the particular circumstances outlined in this submission including the ability to achieve the stated/ implicit objectives/ purpose of the controls.

Strict compliance would tend to hinder the attainment of the objects specified in section 5a(i) and (ii) of the EP&A Act. In my opinion the objection is well founded and able to be supported in this instance.

Boston Blyth Fleming Town Planners

Greg Boston
B Urb & Reg Plan (UNE) CPP
Director

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WARRINGAH DEVELOPMENT ASSESSMENT PANEL MEETING

3.3	24 Lagoon Street and 22 Lagoon Street NARRABEEN - Demolition works and the construction of housing for seniors or people with a disability containing 11 self contained dwellings and basement car parking including strata subdivision
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Panel Members**Kevin Hoffman**, Chair (Environmental Law)**Steve Kennedy**, Urban Design Expert**Marcus Sainsbury**, Environmental Expert**Lloyd Graham**, Community Representative**DA2014/0810****PROCEEDINGS IN BRIEF**

The Panel read the submissions and the reports in the agenda including the addendum regarding deferred commencement of any approval, and visited the site and surroundings. The site is on the corner of Wellington St and Lagoon St and is approximately 100m from shops, services and bus routes on Pittwater Road. The site has a steep slope down from Lagoon St to the flat foreshore land of Narrabeen lagoon. There is one row of houses and flats between the site and the foreshore reserve to the west along Wellington St. Part of the site is flood prone according to the reports.

Houses adjoin the site to the north along Lagoon St and across it to the east. Opposite the site on Wellington St is a 5-storey apartment building located in the B2 Local Centre zone. Wellington St descends the slope beside the site and ends at a public carpark constructed on the foreshore reserve. The reserve is Crown land. Wellington St is the only access into and out of the carpark which is used by shoppers and people using the foreshore.

The proposal is located in the R2 Low Density Residential zone and would not normally be permissible, but the application is made under State Environmental Planning Policy- Housing for Seniors or People with a Disability 2004. This enables such development to be granted approval subject to it complying with the requirements contained in the SEPP.

At the public hearing the Panel was addressed by 7 objectors and for the applicant's town planner and traffic engineer spoke.

The deferred commencement addendum referred to the Council and the applicant's traffic engineers' agreement that, for safety reasons, a raised median should be constructed along the centreline of Wellington St past the site. Since vehicle and pedestrian access to the site is proposed off Wellington St, vehicles will have to drive west past the site into the carpark, circulate through the carpark and drive east on Wellington to the site entries. It is said that this use of the Crown land for access requires the Crown authority's consent, and this could take some time to receive.

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The applicant said access to the development is off Wellington St, and the public carpark is a public facility used by shoppers and people using the foreshore recreation area. Residents and visitors to the site should be able to traverse the carpark as the public does and there should be no need for deferred consent.

Wellington St, westwards from Lagoon St, is narrow having only two carriageways and no parking lanes. It has NO PARKING signs on both sides of the street and a painted double centreline at present. Due to the steep dip down from Lagoon St, vehicles approaching from the east on Wellington St have limited sight distance for stopping as they come over the crest. Likewise vehicles travelling west up the dip have little sight distance for cars on Lagoon St. As a result there are STOP signs for Lagoon traffic at the intersection.

Several objectors, one of whom is disabled, use the intersection at Lagoon St to go to the shops. They showed photos of furniture trucks and other vehicles parked outside the 5 storey apartment building in Wellington St with 2 wheels on the footpath and 2 wheels on the roadway. This causes drivers to go over the double centreline illegally to pass. With the proposed median this would not be possible and vehicles would have to stop. With the short sight distances they had safety concerns.

The objectors also showed photos of the public carpark and parts of Wellington St flooded. No time frame of the frequency of such flooding was given. But the reports before the Panel did advise that parts of the site are flood prone. The applicant assured the Panel that the proposed buildings are elevated above Probable Maximum Flood level. The applicant and the Council agree that the only practical route for disabled pedestrians or wheel chairs to the nearby shops, services and transport is to come out of the development from the main entry lobby to Wellington St and traverse down to the carpark and along it towards Pittwater Road.

Whilst the objectors also had concerns about the Floor Space Ratio being above 1:1, and the height limit being marginally exceeded, the Panel focussed more on the issues of access for Seniors and People with a Disability. The SEPP aims at providing housing for such persons specifically and that includes the concept of ageing in place; that is, a resident may buy a unit when still able but may become disabled or wheelchair bound or need ambulance trips to the doctor or hospital during the remainder of their life. Developments under the SEPP are expected to provide for this.

The SEPP requires in cl 2(1)(c) that the development be of good design for the intended residents described in cll 8, 9 and 14. The route to shops, services and transport must be suitable for disabled persons, including those who use wheel chairs (electric or motorised carts or the like).

In cl 30 the consent authority needs to be satisfied about the location of pedestrian and vehicle access. Also in cl 38, the consent authority must be satisfied that there is obvious and safe pedestrian links from the site to local facilities and transport that provide attractive yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.

The Panel noted that for adequate servicing of the site, furniture trucks, service trucks, taxis and ambulances would need to stop in the carriageway of Wellington St after traversing the public carpark to get to the site. With the centre median proposed, other traffic would have to stop behind them. In the case of furniture trucks that would take some time, or they would probably park across the drive entry to the basement carpark, and partly on the Wellington street footpath as it is

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the only practical location. No provision has been made for such loading and unloading on site. No provision is made for an ambulance parking spot, so it would probably use the same location. In regard to taxi and friends picking up or dropping off using the main entry lobby of the building, the Panel noted the only disabled accessible route is the 1.8m wide pathway from the front door to the kerb. This path is on the sloping part of Wellington St, so for disabled persons, the taxi or car would have to stop exactly adjacent the path. If the car or taxi is loading/unloading a wheel chair or a person with restricted walking ability, it could take some time. Once again other traffic would have to stop and wait.

The Panel noted that the entry drive to the basement carpark on the drawings is shown as starting to ramp down from the kerb line, not just from the property boundary. This effects the public footpath and at the uphill eastern end of the driveway there is a level change as the hill rises that makes it difficult to provide a vehicle standing area clear of the basement carpark ramp. West of the driveway there may be an opportunity for a loading/unloading area offstreet, but there would be unresolved conflicts with the basement entry ramp, the garbage room access and the disabled pedestrian entry from Wellington St to the communal open space of the proposal.

In regard to garbage disposal it was noted that the garbage truck too would have to circulate through the public carpark and come back to the site and stop in Wellington St causing other traffic to stop and wait while it collected the bins. The applicant's traffic engineer commented that this would be a safe manoeuvre as all traffic would be halted.

In looking at the garbage room access for disabled persons to bring their garbage from their units, the Panel noted that the access to it is not convenient for normal purposes. One has to go down the lift to the basement, and if in a wheelchair go through the carpark to the SW corner and take a chairlift to a landing and come on a ramp around from the side of the building to the street front and go into the garbage room. Even if one is ambulatory, the route is down the lift to the basement and then through a fire escape corridor about 14 m long to a set of stairs that comes up beside the chairlift shaft and thence around the building to the street front.

The same route is used to access the communal open space on the west side of the building within the side boundary setback except from the top of the chairlift shaft there is another ramp down into the communal space.

Given these shortcomings the Panel formed the opinion that the development does not satisfy requirements of the applicable SEPP under cl 2(1)(C) and cl 30 and 38 and should be refused.

Voting 4/0

DECISION OF WARRINGAH DEVELOPMENT ASSESSMENT PANEL

THAT Development Application DA2014/0810 for demolition of two houses at Nos 24 and 22 Lagoon St NARRABEEN, and the erection of an 11 unit development with basement carparking for seniors or people with a disability be refused for the following reasons:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the proposed development does not provide safe or suitable pedestrian access in accordance with the objectives and requirements of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, in particular:
 - Clause 2(1)(c) – Aims of Policy;

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- Clause 30 – Site Analysis; and
 - Clause 38 – Accessibility.
2. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development does not provide safe or suitable pedestrian and vehicle access in accordance with the objectives and requirements of Warringah Development Control Plan 2011, in particular:
- C2 – Traffic, Access and Safety; and
 - D18 – Accessibility.
3. Pursuant to Section 79C(1)(a)(iv) of the Environmental Planning and Assessment Act 1979 the application does not comply with the provisions of Section 49(1) of the Environmental Planning and Assessment Regulation, 2000 in that the application does not provide sufficient information in the form of the consent in writing from the Department of Lands, to permit access over Crown land.
4. Pursuant to Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979 the site is not suitable for the development, as proposed, as it does not provide safe pedestrian and vehicle access.
5. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979 the proposed development is not considered to be in the public interest as the development does not provide safe or suitable pedestrian and vehicle access.

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