

# 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 16 MAY 2018**

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



**Peter Robinson**  
**Executive Manager Development Assessment**

**Panel Members**

Lesley Finn	Chair
Steve Kennedy	Urban Design Expert
Annelise Tuor	Town Planner
Phil Jacombs	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 16 May 2018  
in the Council Chambers, Civic Centre, Dee Why  
Commencing at 1.00PM**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF PECUNIARY INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING.....</b>	<b>1</b>
2.1	Minutes of Northern Beaches Local Planning Panel held 2 May 2018	
2.2	Resolution of Northern Beaches Local Planning Panel held 18 April 2018	
<b>3.0</b>	<b>DEVELOPMENT APPLICATIONS .....</b>	<b>2</b>
3.1	DA273/2017 - 3 Rolfe Street, Manly - Alterations and additions to the existing semi-detached dwelling .....	2
3.2	DA263/2017 - 15 Alma Street, Clontarf - Alterations and additions to the existing dwelling.....	26
3.3	DA300/2016 - 22-26 Roseberry Street, Balgowlah - Section 96(2) to modify approved DA300/2016 to extend the approved delivery hours .....	57
3.4	N0512/17 - 69-71 Central Road, Avalon Beach - Demolition of existing dwellings and construction of a 12 unit Seniors Living development with basement parking, landscaping and strata subdivision .....	69
<b>4.0</b>	<b>REVIEW OF DETERMINATIONS</b>	
	Nil	
<b>5.0</b>	<b>PLANNING PROPOSALS</b>	
	Nil	





## **2.0 MINUTES OF PREVIOUS MEETING**

### **2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 2 MAY 2018**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 2 May 2018 were adopted by the Chairperson and have been posted on Council's website.

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### **2.2 RESOLUTION OF NORTHERN BEACHES LOCAL PLANNING PANEL APPROVED 4 MAY 2018**

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#### **RECOMMENDATION**

That the Panel note the resolution in writing of the Northern Beaches Local Planning Panel approved on 4 May 2018 and that it has been posted on Council's website.

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### 3.0 NORTHERN BEACHES LOCAL PLANNING PANEL REPORTS

ITEM 3.1	DA273/2017 - 3 ROLFE STREET, MANLY - ALTERATIONS AND ADDITIONS TO THE EXISTING SEMI-DETACHED DWELLING
REPORTING OFFICER	RODNEY PIGGOTT
TRIM FILE REF	2018/278028
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report 2 <a href="#">↓</a> 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.

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#### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA273/2017 for alterations and additions to the existing semi-detached dwelling at Lot 1 in DP 605127, 3 Rolfe Street, Manly subject to the conditions and for the reasons set out in the Assessment Report.

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northern  
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council

## Delegated Authority Report

2017/

<b>DA #</b>	DA273/2017
<b>Site Address</b>	3 Rolfe Street, Manly
<b>Proposal</b>	Alterations and additions to the existing semi-detached dwelling.
<b>Officer</b>	Max Duncan

**SUMMARY:**

**Application Lodged:**

27 November 2017

Applicant:

Ina Van Der Merwe CARE Tomasy Planning

Owner:

Ina Van Der Merwe

**Estimated Cost:**

\$680,000.00

**Zoning:**

MLEP, 2013 – R1 General Residential

**Heritage:**

Heritage items in the vicinity:

- Item 158: Sewerage Pumping Station No 36 (Golf Parade)

**NSW LEC:**

Not applicable

**Notification:**

29 November 2017- 15 December 2017

**Submissions received:**

Nil (0)

**Site Inspected:**

1 February 2018

**LEP (4.6) Variations proposed:**

#### Clause 4.4: Floor Space Ratio

**DCP Variations proposed:**

Side setbacks, Rear setbacks, Total Open Space, Front fence Height.

**Recommendation:**

### Approval

**Subject Property and surrounding area**



Image 1- Subject site and surrounding development

### R1, R2, R3, E3 & E4 Zones

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The subject property is commonly known as 3 Rolfe Street, Manly and legally known as Lot 1 in DP 605127. The site is located on the northern side of Rolfe Street. The property is regular in shape and has a frontage of 6.05m to Rolfe Street, an average depth of 40.5m and an overall site area of 184.4m<sup>2</sup>. The property currently contains a two storey dwelling with no vehicular access. The property has no significant slope from one side of the site to another.

The subject site is a flood affected lot

The surrounding area includes residential development typically semi-detached and detached single and two storey development.

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

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

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

List previous applications and relevant history

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

The proposal is for alterations and additions to the existing semi-detached dwelling including demolition works and:

##### Ground floor:

- Internal alterations and rear extension of kitchen/dining.

##### First floor:

- 2 bedrooms, rumpus and bathroom.
- Ground floor extension
- Front fence alterations
- Landscaping
- Roof alteration

#### **Internal Referrals**

##### **Engineering Comments**

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

##### **Landscaping Comments**

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

##### **Heritage Comments**

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

##### **Flood Comments**

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

Note: Amended plans were received by Council to address initial flooding issues on site. The amended plans received on 26 April 2018 were considered satisfactory, subject to conditions.

### Planning Comments

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

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

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

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

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

#### **Zone R1 General Residential**

##### **Objectives of zone**

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

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

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

The proposal maintains housing variety within the residential area.

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

Existing residential use remains unchanged.

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

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

4.	Principal Development Standards	Requirement	Proposed	Complies Yes/No	Comments
4.3	Height of buildings	8.5m	6.1m	Yes	The proposal complies with the clause.
4.4	Floor Space Ratio	0.6:1 110.64m <sup>2</sup>	0.78:1 144.74m <sup>2</sup>	No	See Clause 4.6.

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

##### **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	0.6:1 (110.64m <sup>2</sup> )
Proposed	0.78:1 (144.74m <sup>2</sup> )
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	30.8%
	34.1sqm

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

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

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

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

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

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

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

Comment: The bulk and scale of the proposal is consistent with other semi-detached dwellings within the street with a first floor addition, including Nos. 4, 5 and 6 Rolfe Street. The first floor has been articulated and maintains the existing roof configuration as viewed from the front.

- (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 of gross floor area is a result of the proposed first floor, which is sited entirely within the existing building footprint. The works will not obscure and important landscape features on site.

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

Comment: The proposed first floor extension is extended to the north side of the property. The extension will have a maximum height of RL8.43 the proposed extension maintains the existing building height, lower than the existing ridge RL8.48. As such, the works will not be visible from the street.

- (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.

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

Comment: Not applicable

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

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

The underlying objectives of Zone R1 General Residential:

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

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

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

The proposal maintains housing variety within the residential area.



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

Existing residential use remains unchanged.

**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 an outcome that doesn't reduce usable outdoor living space in a relatively dense area, thereby creating an improved outcome for the site, while retaining the existing residential use and reasonable levels of amenity for adjoining properties.

(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:

**"1) The objectives of this clause are as follows:**

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

*The proposed development has been designed to ensure that the bulk and scale of the dwelling is appropriate for the site and surrounding area while also allowing for the creation of dwelling that adequately meets the needs of the family whom will occupy it.*

*The design and layout of the dwelling has been heavily influenced by precedence of approvals granted in the immediate area in particular No.. 4 Rolfe Street (which was approved by the NSW L&E Court) and also the narrow nature of the lot. The constraints of the site have meant that proposal has made use of allowable variations to Council's control for FSR development standards.*

*It is acknowledged that there are some breaches the setback development standards within the DCP. These variations are a consequence of the existing provisions on the site and width of the lot.*

Notwithstanding the breaches to prescribed development standards, as depicted within the architectural plans prepared by the project architect, the proposal's bulk and scale is consistent with the existing and desired future character of the Rolfe Streetscape.

- (b) **to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,**  
The proposal allows for 145 square meters of floor area which have been appropriately designed through the provision of a first floor (increasing off the existing attic space). It is acknowledged that the proposed gross floor area is over and above the prescribed numeric standard contained within the Manly LEP by approximately 34 square meters.

It is important to note that a number of the lots located on the northern side of Rolfe Street are undersized compared to the surrounding area. The subject site is no exception to this, with a total area of 184.4 square meters. As such the project architects have chosen to make use of Clause 4.1.3.1 of the Manly DCP which allows for consideration of exceptions to the maximum FSR under the Manly LEP for undersized lots. The proposed development has been designed within the parameters of this clause of the Manly DCP and the extent of the variation sought is no greater than what is allowed under the clause.

The constraints of the site as outlined throughout the Statement of Environmental Effects have meant that proposal seeks additional variations to some of Council's development standards, specifically side and rear setbacks and landscaping. These have been sufficiently justified with the Statement of Environmental Effects. It is considered that notwithstanding the minor breaches to development standards that the proposed development has been designed to ensure that the bulk and scale of the dwelling is appropriate to for the site while also allowing for the alterations and additions of a dwelling that adequately meets the needs of future occupants.

It is important to note the recent Court Case approved for the development to the west of the subject site been No 4 Rolfe Street which was approved with a variation to the FSR controls.

- (c) **to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,**  
The proposed dwelling has been skillfully designed to take into consideration the constraints of the parcel of land, in particular the 6.05m site width and the existing provisions for the semi-detached dwelling.

It is considered that the proposed dwelling is of a similar bulk and scale and height to other dwellings (as recently approved) within the immediate vicinity and will maintain an appropriate visual relationship between new development and the existing character and landscape of the area.

- (d) **to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,**  
The proposal relates to alterations and additions to an existing semi-detached dwelling. The project architects have review recent approvals surrounding the site and have strategically designed the alterations and additions of the first floor to be lower the the pitch of the existing roof at the front of the site. Therefore the proposed works will not be seen from the streetscape of Rolfe Street when directly viewed from the front of the premises. Therefore the proposal has been designed to minimize any adverse environmental impacts to adjoining land and the public domain.



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

*Not applicable to the proposed development.*

**How is strict compliance with the development standard unreasonable or unnecessary in this particular case?**

The proposed variation is considered to meet the objectives of the Clause 4.6 in that strict compliance with the Floor Space Ratio development standard stipulated with the MLEP 2013 is unreasonable and unnecessary for the following reasons:

- The subject site has an area of 184.4 square meters which is well under the prescribed minimum lot size as detailed with the Manly LEP 2013. Under the provisions of clause 4.1.3.1 of the Manly DCP, Council may consider a FSR variation up to a calculation based on a 250 square meter lot.
- The extent of the variation sought is no greater than what is denoted as being achievable within Figure 30 – Extent of FSR Variation for undersized lots.
- The breach in FSR has been detailed within supporting documentation for this proposal, is considered to cause minimal adverse impacts to the immediate and broader locality and is in keep with the bulk and scale and adjoining properties.
- As demonstrated within the architectural package the proposed dwelling is of a similar bulk and scale to other dwellings within the immediate vicinity and is not considered to have a detrimental impact on the visual amenity of Rolfe Street
- In particular reference is made to the recent Court Case (Sketch Design Studio (t/as SketchArc) v Manly Council [2015] NSWLEC 1202 - Decision date: 04 June 2015) approved for No. 4 Rolfe Street for alterations and additions to an existing semi-detached dwelling. Relevant components of the decision by Commissioner O'Neill are provided below:

46- In order for development consent to be granted for a development that contravenes a development standard in LEP 2013, I must be satisfied that the proposal is consistent with the objectives of the development standard and the objectives for development within the zone (cl 4.6(4)(a)(ii) of LEP 2013) and that the applicant's written request has adequately addressed that compliance with the development standard is unreasonable or unnecessary in the circumstances (cl 4.6(3)(a) of LEP 2013) and that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) of LEP 2013).

47- The relevant objective for the FSR development standard, at sub-cl 4.4(1)(a), (c) and (d) of LEP 2013, is to ensure that the bulk and scale of development is appropriate to the condition of the site and its context. The parties agreed that the remaining objectives are not relevant.

48- The evidence of the planning experts that the maximum exceedance of the FSR Development Standard for the site of 0.6:1 is dictated by cl 4.1.3.1 of DCP 2013, which gives a maximum gross floor area for the site of 150sqm, is incorrect. The provisions of cl 4.6 of LEP 2013 are the sole power to allow a variation of the development standards and DCP 2013 cannot be used to constrain the numerical value of the variation, if it is determined that the provisions of cl 4.6 are met.

49- I am satisfied that the bulk and scale of the proposal is consistent with the adjoining attached dwelling, notwithstanding that the proposal extends further to the rear boundary on the first floor when compared to the adjoining attached dwelling; and that the bulk and scale of the proposal is appropriate to the condition of the site and its context. For this reason, the written request seeking to justify the contravention of the FSR development standard of 0.6:1 adequately addresses the matters required to be demonstrated in cl 4.6(3)(a) and (b) and strict compliance with the FSR development standard is unnecessary in the circumstances.

**Does the non-compliance with the development standard raise any matter of significance for State or Regional environmental planning?**

No matter of significance for state or regional environmental planning would be raised as a consequence of the non-compliance.

**How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?**

The objects set down in Section 5(a)(i) and (ii) are as follows:

“to encourage

- (i) The proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, 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 coordination of the orderly and economic use and development of land...”

The prevailing constraints of the site have hindered the ability of the site to fully comply with Council's numeric standards. As has been detailed with the Statement of Environmental Effects and within this Clause 4.6 Statement a strictly complying development would hinder the ability of the proposal to provide a dwelling that can fully meet the needs and requirements of the growing family that will occupy the site.

Notwithstanding the above, Manly Council's own DCP recognises and gives reference to site's such as our clients site and provides provisions to the extent that variations may be applied for which have been utilised throughout this development proposal.

As has been demonstrated throughout the supporting documentation for this development, there will be minimal adverse impacts to the immediate and broader locality as a result of the proposal. In this regard, compliance with the standard would hinder the attainment of the objects of section 5(a)(i) and (ii) of the Act, being orderly and economic use and development of the site.”

- (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 08-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. However, the development contravenes the development standard by greater than 10% and as such concurrence may not be assumed by a delegate of Council but in this case a local planning panel.

#### Part 5 Miscellaneous Provisions

Not applicable.

#### Part 6 Local Provisions

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

6.	Local Provisions	Applies	Complies	Comment
6.1	Acid Sulphate Soils	Yes	Yes	Proposal complies with this clause.
6.3	Flood Planning	Yes	Yes	Proposal complies with this clause, subject to conditions of consent.
6.4	Stormwater Management	Yes	Yes	Proposal complies with this clause, subject to conditions.

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

There is no applicable Draft Planning Instrument.

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

#### Manly Development Control Plan 2013

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

#### Part 3 General Principles of Development

Issues	Consistent with Principle	Inconsistent with Principle
Streetscape	✓	
Heritage – In Vicinity	✓	
Landscaping Design	✓	
Landscape/Tree Preservation	✓	
Sunlight Access and Overshadowing	✓ (see comments)	
Privacy and Security	✓ (see comments)	
Maintenance of Views	✓	

#### Comment:

##### 3.1 Streetscapes and Townscapes

The proposal is consistent with the relevant objectives relating to Streetscape in section 3.1 of the Manly DCP. The relevant objectives in the Manly DCP that relate to Streetscape are as follows:



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

The extension of the 1.9m high front fence as viewed from the street will not have any unreasonable impact upon the street frontage. The proposed fence is in keeping with the existing streetscape. There is no change to the height of the fence. Similar wall style fences on the front boundary are seen at Nos. 4, 5, 6, 7 and 8 Rolfe Street which are located on the northern side of Rolfe Street are of similar style (See photo 1).



*Photo 1- Neighbouring Rolfe Street Properties*

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

The proposed first floor addition maintains the existing front setback. The pattern of front setbacks along the northern side of Rolfe Street is varied, with no established building line. Given that the first floor does not increase the envelope, the siting is not considered unreasonable.

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

The proposed front fence is reasonable in this residential setting.

#### 3.4.1 Sunlight Access and Overshadowing

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:

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

The proposed works allows of equitable access to light and sunshine to 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.

The subject site has a north-south orientation. Given this and works proposed the only resulting additional overshadowing is at 12pm with negligible increase in shadowing to the front of the subject site. There is no other increase in shadowing to adjoining properties living rooms or private open space between the hours of 9am and 3pm during the winter solstice, compliant with the numeric control.

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

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

The proposed first floor is setback from the ground floor on the southern side of the development, which assists in further reducing overshadowing impacts to adjoining properties.

### 3.4.2 Privacy and Security

The proposal is consistent with the relevant objectives relating to Privacy and Security in section 3.4 of the Manly DCP, subject to conditions. 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.*

The proposed new windows (labelled as W06 and W07) on the western side of the proposed first floor are highlight windows with a sill height of 1.8 above finished floor level to reduce the potential for any direct overlooking to the adjoining western property (No. 4 Rolfe Street).

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

The screen wall located at the end of proposed bedroom will allow for privacy to be maintained to and from the adjoining western property (No. 4 Rolfe Street), while allowing for northern light to penetrate the first floor bedroom.

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

The proposal retains an open frontage to allow for passive Surveillance.

### **Part 4 - Development Controls**

Site Area:	184.4m <sup>2</sup>	Permitted/ Required	Proposed	Complies Yes/No
Wall height West side		6.5m	5.9m	Yes
Number of Storeys		2	2	Yes
Roof height		2.5m	0.5m	Yes
Setback Front		6.0m or streetscape	3m, consistent with streetscape.	Yes
West setback side		1.96m	0.9-1.5m	No
Setback Rear		8.0m	4.77m (Deck) 5.7(Ground Floor) 8.29 (First Floor)	No
Setback to RE1, RE2, E1 and E2		6.0 / 8.0m	0.5m	Yes
Open space - total		Min. 55% of Site Area (101.4m <sup>2</sup> )	32.5% (60m <sup>2</sup> )	No
Open space - landscaped		Min. 35% of Total Open Space (21m <sup>2</sup> )	36% (22m <sup>2</sup> )	Yes
Number of Endemic Trees		1	0	Yes, subject to conditions of consent.
Private Open Space		18m <sup>2</sup>	34m <sup>2</sup>	Yes

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Site Area:	184.4m <sup>2</sup>	<b>Permitted/ Required</b>	<b>Proposed</b>	<b>Complies Yes/No</b>
Fence height		1m solid / 1.5 with transparency	1.9m	No, see comments related to streetscape.

**Comment:**

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

The proposal is non-compliant with the control for rear and side setbacks. An assessment of the proposal against the objectives for setbacks is 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.*

The proposed works will not have an unreasonable impact on the streetscape. The dwelling is consistent with the prevailing spatial proportions of the street. The adjoining properties to the north and south (Nos. 2, 4, 5 and 6 Rolfe Street) maintain a similar bulk and scale and front, side and rear setbacks consistent with the proposed works.

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

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

The proposed works will retain privacy to adjoining properties. There is no unreasonable overshadowing impact that will result from the proposed works. No view to or from public spaces will be compromised by the proposed development.

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

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

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

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

The proposal is compliant with the numerical control relating to landscaped open space. The proposal complies with the clause, subject to conditions.

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

The subject site is not located in a bushfire asset protection zone.

Given the above it is considered that the relevant setback and building separation objectives outlined in Clause 4.1.4 have been achieved, and is therefore considered acceptable on merit.



#### 4.1.5 Open Space and Landscaping

The proposal is non-compliant with the control for Total and landscaped open space. An assessment of the proposal against the objectives for setbacks is as follows:

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

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

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.*

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.*

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.*

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.*

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

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

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

#### Comment:

##### Flood Control Lots

The proposal is deemed to be consistent with the Northern Beaches Council Policy – Flood Prone Land, subject to conditions.

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

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

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

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

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

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

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

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

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

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

The application was notified to nearby and adjoining property owners in accordance with Section 2.3 of Council's Development Control Plan 2013 with no submissions received.

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

The public interest is best served by the consistent application of the relevant environmental planning instruments and by the consent authority ensuring that any adverse impacts on the surrounding area are avoided. This is considered to have been achieved in this instance subject to the recommended conditions of consent.

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

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

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

**Comments:**

In this case, the proposed development will not require the provision of or increase the demand for public amenities and public services in the area. As such, the payment of a monetary contribution is not required.

**CONCLUSION:**

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



## RECOMMENDATION

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

That Development Application No. 273/2017 for alterations and additions to the existing semi-detached dwelling house at 3 Rolfe Street, Manly be **Approved** subject to the following conditions:

## GENERAL CONDITIONS

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

*Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. 273/2017:*

Plan No. / Title	Issue/ Revision & Date	Prepared By
Da-02/ Existing+ Demo+ Management+ Sediment /Erosion Control Plan	Revision B/ 24 April 2018	Mackenziepronk architects
DA-03/ Site Analysis Plan	Revision B/ 24 April 2018	Mackenziepronk architects
DA-04/ Site+ Roof Plan	Revision B/ 24 April 2018	Mackenziepronk architects
DA-05/ Proposed Ground and First Floor Plan	Revision B/ 24 April 2018	Mackenziepronk architects
DA-06/ Proposed Elevations	Revision B/ 24 April 2018	Mackenziepronk architects
DA-07/ Proposed Elevations	Revision B/ 24 April 2018	Mackenziepronk architects
DA-08/Proposed Sections	Revision B/ 24 April 2018	Mackenziepronk architects
DA-10/ Landscape + Area Plans	Revision B/ 24 April 2018	Mackenziepronk architects

*Reference Documentation relating to Development Consent No. 273/2017:*

- BASIX Certificate number: A290560 dated 21 August 2017.

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

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

## 2. Prescribed Conditions

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

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- (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)

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

### **ANS01**

An Erosion and Sediment Management Plan which provides adequate measures for erosion and sediment control must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier. The Erosion and Sediment Management Plan shall comply with the requirements for Erosion and Sediment Management plans contained with Clause 2.1.11 of the Manly Development Control Plan, 2013 and Manly Council's Guidelines for Sediment and Erosion Controls on Building Sites, 2005.

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

#### ANS02

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.

#### ANS03

The development shall be designed and constructed so that there is no net loss of flood storage below the 1% Annual Exceedance Probability flood level of 3.16m AHD.

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).

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 3.66m 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.

The underfloor area of the extension to the dwelling is to be designed and constructed to allow clear passage of floodwaters. The underfloor perimeter of the dwelling is to have a minimum of 50% open area. 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.

#### 1 (2CD01)

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

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

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

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

#### 2 (2CD05)

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

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

### 3 (2MS01)

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

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

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

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

### 4 (2WM02)

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

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

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

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

### 5 (4AP02)

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

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

### 6 (4CD01)

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

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

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

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

#### 7 (4CD02)

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

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

Reason: To prevent disturbance to the surrounding community.

#### 8 (4LD03)

The felling, lopping, topping, ringbarking, wilful destruction or removal of any tree/s unless in conformity with this approval or subsequent approval is prohibited.

Reason: To prohibit the unnecessary damage or removal of trees without permission from Council during any construction.

#### 9 (4LD08)

Retain and protect trees and planting on council's Road Reserve during construction including the existing White Calliandra located along the front boundary.

Reason: To maintain the number of street trees and preserve the amenity of the local area.

## 10 (4MS04)

An approved Erosion and Sediment Management plan is to be implemented from the commencement of works and maintained until completion of the development.

The design and controls addressed in the Sediment and erosion management plan must comply with the criteria identified in:

- Manly Development Control Plan 2013, Amendment 2, and
- Manly Councils Guidelines for Sediment and Erosion Controls on building sites, 2005, and
- The document "Managing Urban Stormwater: Soils and Construction" Volume 1, 2004.

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

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE****ANS05**

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.

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

## 11 (6LP01)

No existing street trees can be removed without Council approval. Where such approval is granted, the trees must be replaced at full cost by the applicant with an advanced tree of a species nominated by Council's relevant officer.

Reason: To encourage the retention of street trees.

## 12 (6LP04)

Leighton Green Cypress Cupressocyparis leylandii or any of its cultivars, must not be planted on the site for the life of the development. In the event of any inconsistency between this condition and the development application documents, this condition will prevail to the extent of the inconsistency.

Reason: To reduce the potential for adverse amenity effects such as overshadowing, loss of views, and loss of plant diversity.

## 13 (6MS02)

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

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

[illegible]



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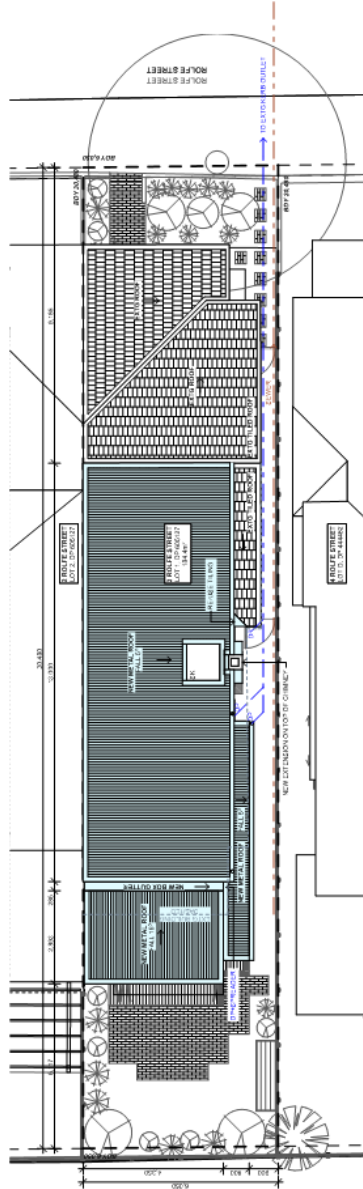
REV	NOTES	DATE	REV	NOTES	DATE	LEGEND
						 W  D  S  N  P  I

WINDOW/DOOR MARKER	AW	AWNING WINDOW	NE	METAL ROOF SHEETING
SKYLIGHT MARKER	RT	CERAMIC TILES	NS	LASTERED CLADDING
SKYLIGHT MARKER	FC	CEILING TILES	PK	ROOF SKEWWORK
SMOKE ALARM	FC	EXPOSED GLUING	SK	SKYLIGHTS
BOUNDARY (REF. SURVEY)	FW	FLOOR WASTE	TB	TIMBER FLOOR BOARDS
	L	LOW/RES	TD	TIMBER DECKING

**mackenziepronk architects**  
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t: 02 9559 4595 f: 02 9558 4582

CLIENT	VAN DER MERWE			
PROJECT	3 Rolfe Street Manly NSW 2095			
FOR	FOR DEVELOPMENT APPLICATION	DRAWING NO	DA07	REVISION
		SCALE	1:100	
		DRAWN BY	NIW KW	DATE
				24/4/18





1 SITE PLAN



NOT FOR CONSTRUCTION		REV	NOTES	DATE	LEGEND	CLIENT	DRAWING TITLE
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						PROJECT	SCALE
						3 Rolf Street Manly NSW 2095	1:200
						FOR DEVELOPMENT APPLICATION	DRAWN BY NM KW DRAWING NO. DA-14 FILE: 10383 3 ROLF ST (DA) 2018 180424.dwg

**A4**

ITEM 3.2	DA263/2017 - 15 ALMA STREET, CLONTARF - ALTERATIONS AND ADDITIONS TO THE EXISTING DWELLING
REPORTING OFFICER	RODNEY PIGGOTT
TRIM FILE REF	2018/278222
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report 2 <a href="#">↓</a> 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.

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### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA263/2017 for alterations and additions to the existing dwelling at Lot 13 Sec C DP 2610, 15 Alma Street, Clontarf subject to the conditions and for the reasons set out in the Assessment Report.

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northern  
beaches  
council

## Delegated Authority Report

2017/536670

<b>DA #</b>	DA263/2017
<b>Site Address</b>	15 Alma Street, Clontarf
<b>Proposal</b>	Alterations and additions to the existing dwelling.
<b>Officer</b>	Tom Prosser

### **SUMMARY:**

#### **Application Lodged:**

14 November 2017

#### **Applicant:**

M Mallawaratchi & T Williams care of Vaughan Milligan

#### **Owner:**

Mike Mallawaratchi & Tamara Williams

#### **Estimated Cost:**

\$529,920.50

#### **Zoning:**

MLEP, 2013 – R2 Low Density Residential

#### **Heritage:**

Not in close vicinity.

#### **NSW LEC:**

Not applicable

#### **Notification:**

22 November 2017 to 8 December 2017

#### **Submissions received:**

3

#### **Site Inspected:**

8 January 2017

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

Height of building, FSR

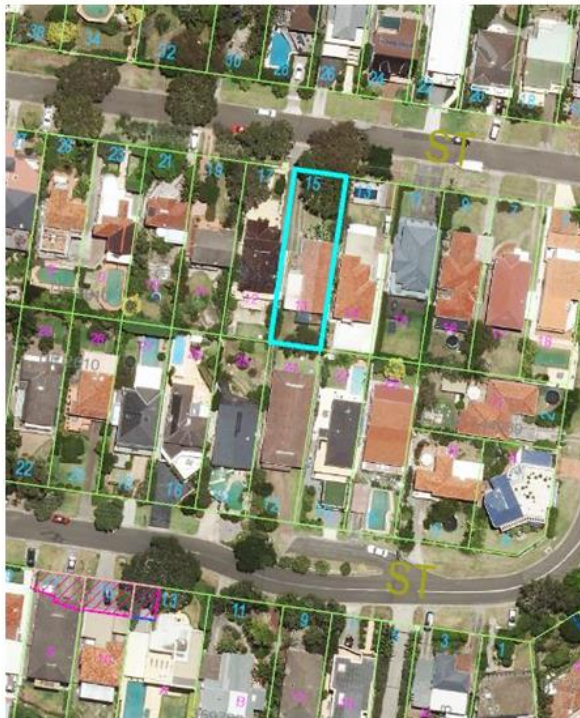
#### **DCP Variations proposed:**

Wall height, Number of storeys, Setbacks, Open space and  
Swimming pool setback

#### **Recommendation:**

Approval

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



R1, R2, R3, E3 & E4 Zones

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The subject property is commonly known as 15 Alma Street and legally known as Lot 13 Sec C in DP 2610. The site is located on the southern side of Alma Street. The property is rectangular in shape and has a frontage of 12.215m to Alma Street, an average depth of 42.67m and an overall site area of 518.5m<sup>2</sup>. The property currently contains a two storey dwelling with vehicular access via an existing driveway from Alma Street. The property slopes from the front of the property to the rear and includes a cross fall of approximately 2m

The surrounding area includes residential dwellings on both sides of Alma Street.

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

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

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

The proposal includes alterations and additions to the existing dwelling involving the following:

##### **Ground Floor**

- New entry hall and entry deck
- Internal alterations to bathroom and living room
- Deletions and additions of windows
- Extension of balcony

##### **First Floor**

- Additions of tiled decks
- Master bedroom
- Living room
- Walk in robe
- Ensuite

##### **External**

- Swimming Pool
- New driveway
- Waste storage
- Front Fence
- Landscaping

#### **Internal Referrals**

##### **Landscaping Comments**

Council's Landscape Officer requested that additional information for the proposal be submitted as follows:

##### ***"Arboricultural Impact Assessment Report***

- a) An Arboricultural Impact Assessment Report is required to determine the likely impact of the proposed new front boundary fencing to the existing two (2) Gum trees in close proximity to the front boundary. One Gum is located within the lot property and one is located within Council's road reserve.*
- b) It is noted that the two (2) existing Gums appear as significant species providing high streetscape amenity and natural environmental value, and therefore retention with no impact shall be required. Any impact to the health of these trees shall result in the recommendation to refuse the proposed front fencing.*
- c) The report shall provide relevant information on how the two (2) existing Gums will be retained, including construction techniques for the proposed new front fence i.e. pier and beam construction for the masonry portion, or an alternative design solution."*

Additional information was provided by the applicant and Council's Landscape Officer had no objections to the proposal, subject to conditions.

### External Referrals

#### **AUSGRID**

The proposal was referred to the AUSGRID. No comment was received at the time of writing this report.

### Planning Comments

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

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

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

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

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

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

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

The subject site is located in Zone R2 Low Density Residential under the Manly LEP 2013. The proposed development is considered permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

#### **Zone R2 Low Density Residential**

##### **Objectives of zone**

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

The proposal is for alterations and additions to the existing dwelling house.

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

Not applicable.

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

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

4.	Principal Development Standards	Requirement	Proposed	Complies Yes/No	Comments
4.3	Height of buildings	8.5m	8.6m	No.	See comments.
4.4	Floor Space Ratio Sit area: 518.5m <sup>2</sup>	0.4:1 207.4m <sup>2</sup>	0.5:1 260m <sup>2</sup>	No.	See comments.



#### 4.6 Exceptions to development standards

##### Height of Building

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

Requirement	8.5m
Proposed	8.6m
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	1%

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

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

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

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

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

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

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

Comment: The proposal is for alterations and additions to the existing dwelling including an additional storey. This majority of this storey will be under the development standard for height but there will be a slight non-compliance (1% on the standard) at the rear of the site and to the west. The slight slope to the rear, setback of top floor from ground floor walls, and setback form and compliant presentation to the street ensures that the building would be reasonable given the context of the street.

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

Comment: The compliant front setback, compliant height upslope and the minor height non-compliance to the rear provide a situation in which the bulk and scale of the proposed dwelling is reasonably controlled. In addition, the design of the top floor being setback from the lower floors provides an appropriate control of bulk which provides a reasonable visual presentation to the street and results in a 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: The proposal has been assessed for views including consideration of the Land and Environment Court approved principle under Part 3.4.3 for Maintenance of Views in this report.

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

Comment: The proposal has been assessed for views including consideration of the Land and Environment Court approved principle under Part 3.4.3 for Maintenance of Views in this report.

- (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 has been assessed for views including consideration of the Land and Environment Court approved principle under Part 3.4.1 for Sunlight Access and Overshadowing in this report.

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

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

The underlying objectives of Zone R2 Low Density zone are as follows:

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

Comment: The proposal maintains the use of the site as a dwelling house.

- *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 in the street context.

- (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 height 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 following justification has been provided by the applicant:

*"It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for additions and alterations to an existing dwelling, which are constrained by the siting of the existing building.*

*Council's controls in Clause 4.3 provide a maximum overall height of 8.5m.*

*It is considered that the proposal achieves the Objectives of Clause 4.3 and that the development is justified in this instance for the following reasons:*

- The proposed works will maintain consistency with the general height and scale of residential development in the area and the character of the locality.*
- The proposed height and the overall scale of the new works will maintain amenity and appropriate solar access for the subject site and neighbouring properties.*
- The new works are largely sited to the rear of the existing dwelling, and will not result in any unreasonable visual impact on the Alma Street streetscape.*

*For the above reasons it would therefore be unreasonable and unnecessary to cause strict compliance with the standard."*

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

(a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

Comment: A written request has been provided 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 reasoning as stated above.

- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

Comment: For reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density residential zone in the MLEP 2013.

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

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. This with the exception of development that contravenes a numerical standard but greater than 10% or is a variation to a non-numerical standard. The proposed variation is 1% to a numerical standard and as such concurrence of the Secretary may be assumed.



#### Floor Space Ratio

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

Requirement	0.4:1 207.4m <sup>2</sup>
Proposed	0.5:1 260m <sup>2</sup>
Is the planning control in question a development standard?	Yes.
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical.
If numerical enter a % variation to requirement	25.4%

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

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

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

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

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

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

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

Comment: The proposal is for alterations and additions to the existing dwelling. As a result of the setback of the dwelling from the street and the setback of the top floor from lower levels, the proposed dwelling would be reasonable in terms of streetscape character.

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

Comment: As a result of the siting of the dwelling and the slope of the site, the proposed bulk will not unreasonably obscure 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 provides alterations and additions to the existing dwelling and due to the maintenance of the front setback area including a compliant provision of landscaped open space, these alterations and additions would be reasonable in terms of maintaining an appropriate visual relationship in the area.

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

Comment: The siting of the dwelling away from the street and down slope as well as the modulation of the building including setback of the first floor side walls, provides a situation in which there would be no adverse environmental impact to adjoining land or the public domain.

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

Comment: Not applicable.

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

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

The underlying objectives of Zone R2 Low Density Residential:

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

Comment: The proposal maintains the use of the site as a dwelling house.

- *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 street context.

- (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:

*"It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for additions and alterations to an existing dwelling, which are constrained by the siting of the existing building. It is considered that the proposal achieves the Objectives of Clause 4.4 and that the development is justified in this instance for the following reasons:*

- *The proposed works will maintain consistency with the general height and scale of residential development in the area and the character of the locality.*

- *The proposed height and the overall scale of the new works will maintain amenity and appropriate solar access for the subject site and neighbouring properties.*
- *The new works are not considered to result in any unreasonable visual impact on the Alma Street streetscape.*

*For the above reasons it would therefore be unreasonable and unnecessary to cause strict compliance with the standard."*

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

(a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

Comment: A written request has been provided 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 reasoning as stated above.

- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

Comment: For reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone in the MLEP 2013.

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

Comment: Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. This was with the exception of development that contravenes a numerical standard by greater than 10% or is a variation to a non-numerical standard. The proposed variation is 25.4% to a numerical standard and as such the application has been referred to the Northern Beaches Local Planning Panel for determination.

## Part 5 Miscellaneous Provisions

There are no relevant provisions of the Manly LEP 2013 for Part 5.

## Part 6 Local Provisions

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

6.	Local Provisions	Applies	Complies	Comment
6.1	Acid Sulphate Soils	Yes	Yes	Complies.
6.9	Foreshore Scenic Protection Area	Yes	Yes	The proposal is located in the Foreshore Scenic Protection Area under the Manly LEP 2013. The appropriate siting of the dwelling including setback from the street will ensure there is no unreasonable impact on the scenic values of the area.
6.12	Essential services	Yes	Yes	Existing and subject to conditions.

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

There is no applicable Draft Planning Instrument.

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

#### **Mainly Development Control Plan 2013**

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

#### **Part 3 General Principles of Development**

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

#### **Comment:**

##### 3.4.2 Privacy and Security

The proposal is consistent with the objectives for Privacy and Security 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.*

The proposal involves new windows to the side elevations and open space above ground to the rear of the dwelling. Subject to conditions to the conditions explained below, these windows and open space area are designed and located so that loss of privacy is reasonable minimised. This includes minimising the extent of windows at first floor level and screening the open spaces where appropriate.

The non-standard condition ANS01 has been imposed to ensure the first floor level deck does not provide unreasonable privacy issues to the adjoining dwelling, given its extent and location within the side setback.

The large extent of the living room window, location within the side setback and close proximity to the neighbouring dwelling provides reasoning to reduce its size or provide an opaque nature as required by non-standard condition ANS02.

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

The screening to decks and balconies to the rear is provided on the sides and limited in height to ensure there is reasonable compromise between views to the harbour and minimisation of privacy impacts to adjoining dwellings.



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

The proposed dwelling would maintain areas including windows and decks which allow for appropriate opportunity for awareness of neighbourhood security.

#### 3.4.3 Maintenance of Views

The proposal is consistent with the objectives for Maintenance of Views as follows:

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

The orientation of the proposed dwelling, adjoining dwellings and dwellings on the opposite side of Alma Street, allow for views of the rear and front boundaries of the harbour. The proposed siting of the dwelling, setback from the street, as well as at a similar alignment to the adjoining dwellings allows these views to be majorly retained for both the subject site and surrounding dwellings.

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

An assessment of view loss has been undertaken with reference to the Views Principle established by the NSW Land and Environment Court. This has been made with consideration of view sharing and the importance of minimising disruption of views (particularly harbour views in this circumstance). The areas with potential for substantial view loss as a result of the proposed development are on the opposite side of the street from the subject site. These areas have been assessed under the view loss principle with. Below views from the property directly opposite at 26 Alma Street, Clontarf have been considered under each step of the principle as follows:

#### 26 Alma Street

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

Comment: The views obtained from 26 Alma Street, opposite the subject site, are water views toward the harbour including an interface between water and land. These views are obscured by street trees and are generally obtained over the top of the building on the opposite side of Alma Street.

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

Comment: The views obtained from across the front boundaries from living rooms and balconies.

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

Comment: As a result of the location of the proposed dwelling down slope, behind an existing street tree, the loss of views would be negligible. It is noted that the impact of the proposed dwelling should be considered, despite the street tree. As a result of the slope and location of the dwelling, this impact would be negligible to minor (See Photo 1).



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

Comment: The proposed development is non-compliant with building height under the Manly LEP, 2013. However, this non-compliance is minor, being 0.1m, and this would not have any substantial impact on views. As a result of the topography of the land and view corridors available to the sides of the proposed dwelling, alternative designs would not markedly reduce view impact.



Photo 1: View from 26 Alma Street, Clontarf.

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

The siting of the dwelling and topography of the land provide a situation in which there would be no unreasonable opportunity for 'view creep' and view loss would be minimised.

#### **Part 4 - Development Controls**

Site Area: 518.5m <sup>2</sup>	<b>Permitted/ Required</b>	<b>Proposed</b>	<b>Complies Yes/No</b>
Wall height East side	6.7m	7.5m	No, see comments.
West side	6.7m	8m	No, See comments.
Number of Storeys	2	3	No, see comments.
Roof height	2.5m	0.6m	Yes.
Setback Front	6.0m or streetscape	7.4m	Yes.
East setback side	2.5m	0.6m-1.1m (ground floor) 2.1m (first floor)	No. See comments.
West setback side	2.67m	0.464m-0.924m (ground floor) 1.92m (first floor)	No. See comments.
Setback Rear	8.0m	6.5m (balcony)	No, see comments.
Open space - total	Min. 60% of Site Area (311.1m <sup>2</sup> )	44.3% (230m <sup>2</sup> )	No, see comments.
Open space - landscaped	Min. 40% of Total Open Space (92m <sup>2</sup> )	60.8% (140m <sup>2</sup> )	Yes.
Open space - above ground	Max. 25% of Total Open Space (57.5m <sup>2</sup> )	55m <sup>2</sup>	Yes.
Private Open Space	18m <sup>2</sup>	25m <sup>2</sup>	Yes.
Car Parking – Residents	2 spaces	2 tandem spaces.	Yes.
Swimming pool height	1m	0m	Yes.
Swimming pool setbacks pool concourse / deck	1m	1.3m (sides) 0.7m (rear)	No, see comments.
Swimming pool setbacks water's edge	1.5m	1.6m (side) 0.9m (rear)	No, see comments.
Fence height	1m solid / 1.5 with transparency	1.332m	Yes.

**Comment:**

LEP Clause 4.3 Height of buildings

The proposal is non-compliant with the controls for wall height and number of storeys but consistent with relevant objectives prescribed by the Manly DCP, 2013 as follows:

(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 proposal is for alterations and additions to the existing dwelling including an additional storey. The slight slope to the rear, setback of top floor from ground floor walls, and setback form and compliant presentation to the street ensures that the building would be reasonable given the context of the street.

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

Comment: The compliant front setback, compliant height upslope and the minor height non-compliance to the rear provide a situation in which the bulk and scale of the proposed dwelling is reasonably controlled. In addition, the design of the top floor being setback from the lower floors provides an appropriate control of bulk which provides a reasonable visual presentation to the street and results in a 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: The proposal has been assessed for views including consideration of the Land and Environment Court approved principle under Part 3.4.3 for Maintenance of Views in this report.

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

Comment: The proposal has been assessed for views including consideration of the Land and Environment Court approved principle under Part 3.4.3 for Maintenance of Views in this report.

- (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 has been assessed for views including consideration of the Land and Environment Court approved principle under Part 3.4.1 for Sunlight Access and Overshadowing in this report.

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

The proposal is consistent with the objectives for Setbacks 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.*

Although non-compliant with the controls for site setbacks, the proposal is compliant with the control for front setback and of a similar bulk and scale as other dwellings in the streetscape.

Additionally, the proposal has a varying side setbacks across the property to provide a modulation that sufficiently minimised the presentation of bulk in the streetscape.

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

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



The orientation of the private open space areas to the rear, compliance with controls for Sunlight and access and overshadowing, the appropriate provision of bulk across the site provides a development that would not have an unreasonable impact on any amenity. In addition, the windows on the side elevations are appropriately located and minimised in extent so as to not provide any issue with overlooking, subject to a conditions for W6.

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

The proposed dwelling has a compliant front setback and has a similar alignment in the subdivision pattern as neighbouring dwellings. Along with the lack of unreasonable amenity impact and the reasonable visual presentation to the street, this ensures an appropriate siting, despite the non-compliance with the numerical controls for side setbacks.

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

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

The proposal is compliant with the controls for landscaped open space, front setback and rear setback so that there is appropriate opportunity for the enhancement and maintenance of natural features.

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

Not applicable.

#### 4.1.5 Open Space and Landscaping

The proposal is consistent with the objectives for Open space and Landscaping as follows:

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

Given the proposal includes a numerically compliant amount of landscaped open space and has a reasonable front setback, there is reasonable opportunity for retention and augmentation of 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.*

The proposal provides numerically compliant landscaped open space and a reasonable amount of open space both the front and rear of the site.

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

As explained under Part 3 of the Manly DCP in this report, the proposal provides reasonable levels of amenity and this is contributed to by the appropriate open space provided.

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

The compliant amount of landscaped area will maximise water infiltration and minimise stormwater runoff.

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

Not applicable.

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

The area at the front and rear of the site as well as the compliant amount of landscaped area will maximise potential for wildlife corridors.

#### Swimming Pools

The proposal is consistent with the objectives for Swimming Pools under the Manly DCP 2013 as follows:

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

The compliant side setbacks and reasonable extent of the associated concourse area for a swimming pool in the rear setback is reasonable. In particular the location in the rear setback is appropriate given the character of the street and lack of unreasonable amenity impact.

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

The proposed swimming pool is at the rear of this site and would not be easily visible from Alma Street.

*Objective 3) To integrate landscaping; and*

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

The proposal provides landscaping to surround the pool and would have the potential to be an emergency water source.

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

<b>Special Character Areas and Sites</b>	<b>Applicable</b>	<b>Not Applicable</b>
Conservation Area		✓
Foreshore Scenic Protection Area	✓ Complies with provisions.	
Threatened Species and Critical Habitat		✓
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓
Gurney Crescent and Clavering Road, Seaforth		✓

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

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

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

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

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

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

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



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

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

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

The application was notified to nearby and adjoining property owners in accordance with Section 2.3 of Council's Development Control Plan 2013 with 3 submissions received from the following objectors raising the following concerns:

Submission and Address	Main Issues raised in the submission	Comments on submission
1.J and D Padman, 17 Alma Street, Clontarf.	<ul style="list-style-type: none"> <li>• Survey and garage discrepancies. Roof eaves not dimensioned.</li> <li>• No landscape plan submitted. Concern for removal of tree and removal of hedge which would have privacy impact.</li> <li>• Pool not mentioned in SoEE and no detail of pool equipment.</li> <li>• Concern for windows and inset. Request for compliant inset and highlight window or opaque glass. Due to non-compliance of W06, a highlight window or opaque glass is sought.</li> <li>• Overshadowing and seeking dwelling to be compliant due to this.</li> <li>• Building height/wall height</li> <li>• Request for privacy screens to upper level patio.</li> </ul>	<ul style="list-style-type: none"> <li>• An additional survey was requested and submitted. This survey was found to be adequate.</li> <li>• Conditions have been recommended to ensure reasonable landscaping/ planting that would assist with minimisation of privacy loss. 'Adequate details regarding the proposed swimming pool have been provided on the plans. A condition has been recommended regarding pool equipment. A condition has been recommended to minimise privacy impact caused by W6. Other windows have been found reasonable under the section for privacy in the Manly DCP, 2013. The proposal is compliant with the controls for Sunlight Access and Overshadowing under the Manly DCP, 2013. An assessment of building height and wall height in this report has found the proposal to be reasonable. A condition has been recommended for a privacy screen to be constructed to the western elevation of the upper level deck.</li> </ul>

2. G & K. Riisfeldt, 28 Alma Street, Clontarf.	<ul style="list-style-type: none"> <li>• Understatement of scale of development and 3 storey nature.</li> <li>• Underestimated/miscalculated FSR. The existing ground floor is not included.</li> </ul>	<ul style="list-style-type: none"> <li>• Council has conducted an independent calculation for FSR which includes the parts of the ground floor that meet the definition for gross floor area under the Manly DCP, 2013.</li> </ul>
3. D & F. Tuohy, 26 Alma Street, Clontarf.	<ul style="list-style-type: none"> <li>• Inconsistencies in statement and plans including height</li> <li>• Western setback impact on views and request for removal of tree to improve views.</li> <li>• Request for non-reflective roof</li> </ul>	<ul style="list-style-type: none"> <li>• The height has been measured as being 8.6m at the highest point of the building based on existing ground level. This is despite elevations and sections showing (and being at) a lower level.</li> <li>• An assessment of views and setbacks in this report has found the proposal to be reasonable.</li> <li>• A condition has been recommended regarding the roof colour.</li> </ul>

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

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

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

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

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

Comments: In this case, the proposal does not involve the addition of any dwellings and as a result contributions are not applicable.

**CONCLUSION:**

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

## RECOMMENDATION

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

That Development Application No. DA263/2017 for alterations and additions to the existing dwelling at 15 Alma Street, Clontarf be **Approved** subject to the following conditions:-

## GENERAL CONDITIONS

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

*Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. DA263/2017:*

Plan No. / Title	Issue/ Revision & Date	Prepared By
DA02- Site/ Roof/ Sediment Erosion Plan	Thursday September 21, 2017.	Action Plans
DA04- Lower Ground Floor Plan	Thursday September 21, 2017.	Action Plans
DA06- Ground Floor Plan	Thursday September 21, 2017.	Action Plans
DA07- First Floor Plan	Thursday September 21, 2017.	Action Plans
DA08- North/East Elevation	Thursday September 21, 2017.	Action Plans
DA09- South/ West Elevation	Thursday September 21, 2017.	Action Plans
D10 Front Fence Plan and Elevation	Thursday September 21, 2017.	Action Plans
DA11- Long/ Cross Section	Thursday September 21, 2017.	Action Plans

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

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

## 2. Prescribed Conditions

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

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

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

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

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

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

Reason: Legislative Requirement (DACPLB09)

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

### **ANS01**

A privacy screen is to be constructed on the rear deck at first floor level along the western elevation. The privacy screen is to be 1.5m in height and to extend 2m from the rear of the dwelling along the western elevation of the deck. Details are to be provided prior to the issue of a Construction Certificate.

Reason: To minimise loss of privacy to adjoining property.

### **ANS02**

The proposed living room window at the west elevation, W6, is to be one of the following:

- Opaque
- A highlight window no lower than 1.5 metres (RL73 570) from first floor level (RL72 070).

Details are to be provided prior to the issue of a Construction Certificate.

Reason: To minimise loss of privacy to the adjoining property.



#### ANS03

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.

#### ANS04

A landscaped buffer being provided along the south, east and west boundaries adjacent to the proposed swimming pool, for the full extent, inclusive of screen planting at minimum 900mm centres, to a mature height of 3 metres. Details including species, mature height, planting, pot size (minimum of 25 litres) and spacing to provide continuous screening are to be submitted to the the certifying authority prior to the issue of the Construction Certificate.

Reason: To ensure an effective buffer zone/screen planting is provided.

#### ANS05

Details are to be provided of the existing or proposed native trees for the site which are typically expected to reach a height at maturity of 10 metres, to bring the proposal into compliance with Figure 37 of the Manly Development Control Plan 2013, and inclusive of a replacement tree for the removal of the existing Melaleuca species in the rear yard. A list of appropriate native trees for the Manly area may be obtained at Council's Customer Service desk and the Manly Council website. Details of new planting are to include appropriate siting and pot size (minimum of 25 litres) in accordance with section 2.1.3 of the Manly Development Control Plan 2013. Details are to be submitted with the Construction Certificate to the satisfaction of the Council/Accredited Certifier.

Reason: This is to ensure the planting of endemic trees back onto the site.

#### 1 (2CD01)

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

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

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

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

#### 2 (2CD02)

A Dilapidation Report is required for this development. A photographic survey of adjoining properties detailing the physical condition of those properties, both internally and externally, including walls, ceilings, roof, structural members and other such items, is to be submitted to Council and the Accredited Certifier (where Council does not issue the Construction Certificate) prior to the issue of the Construction Certificate. This survey is to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property/ies.

All costs incurred in achieving compliance with this condition must be borne by the person entitled to act on this Consent.



If access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant must demonstrate, in writing, to Council's satisfaction attempts have been made to obtain access and/or advise the affected property owner of the reason for the survey and these attempts have been unsuccessful. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only, and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

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

### 3 (2DS01)

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

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

### 4 (2MS01)

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

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

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

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

### 5 (2SP01)

All of the following are to be satisfied in relation to the proposed swimming pool:

- 1) The swimming pool is to be surrounded by a child-resistant barrier in accordance with the Swimming Pools Amendment Act 2009 and Regulations 2008 which:
  - separates the swimming pool from any residential building situated on the property and from any place adjoining the property, and
  - is designed, constructed, installed and maintained in accordance with the standards prescribed by the Regulations and appropriate Australian Standards.
- 2) All surface waters from non-pervious areas surrounding the swimming pool must be collected and disposed of to the stormwater system.

- 3) Windows giving access to the pool areas must be made child safe and comply with the following:
- Window opening is to be restricted by an approved means so that a round bar 105mm in diameter cannot be passed through the opening or the window is to be protected by a child safe grille.

However if the restricted opening of such windows means that they will no longer meet the natural ventilation requirements of the Building Code of Australia, then only a child safe grille is permissible.

- 4) The proposed pool gates are to be mounted so that:
- they are clear of any obstruction that could hold the gate open, and
  - when lifted upward or pulled downward, movement of the gate does not release the latching device, unhinge the gate or provide a ground clearance greater than 100mm; and
  - they open outwards from the pool.

Reason: To comply with Australian Standard AS 1926 and provide a reasonable level of child safety

#### 6 (2SP04)

Any mechanical plant associated with the swimming pool and spa shall be centrally located within the site, away from the boundaries and acoustically treated so the noise from the machinery is not audible at the property boundary. Details are to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the acoustic amenity of the neighbouring residents.

#### 7 (2WM02)

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

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

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

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

#### 8 (4CD01)

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

- All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- Demolition must be carried out by a registered demolition contractor.
- A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- No blasting is to be carried out at any time during construction of the building.
- Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- Any demolition and excess construction materials are to be recycled wherever practicable.
- The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as

defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.

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

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

#### 9 (4CD02)

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

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

Reason: To prevent disturbance to the surrounding community.

#### 10 (4LD03)

The felling, lopping, topping, ringbarking, wilful destruction or removal of any tree/s unless in conformity with this approval or subsequent approval is prohibited.

Reason: To prohibit the unnecessary damage or removal of trees without permission from Council during any construction.

#### 11 (4LD04)

The following precautions must be taken when working near trees to be retained:

- harmful or bulk materials or spoil must not be stored under or near trees,
- prevent damage to bark and root system,
- mechanical methods must not be used to excavate within root zones,
- topsoil from under the drip line must not be added and or removed,
- ground under the drip line must not be compacted, and
- trees must be watered in dry conditions.

Reason: This is to ensure no damage is caused to trees from various methods of possible damage.



12 (4LD05)

Trees and shrubs liable to damage (including, but not limited to street trees) are to be protected with suitable temporary enclosures for the duration of the works. These enclosures are to only be removed when directed by the Principal Certifying Authority.

The enclosures are to be constructed out of F62 reinforcing mesh 1800mm high wired to 2400mm long star pickets, driven 600mm into the ground and spaced 1800mm apart at a minimum distance of 1000mm from the tree trunk.

Reason: To ensure protection of the trees on the site which could be damaged during any development works and to outline the type of protection.

13 (4LD06)

All disturbed surfaces on the land resulting from the building works authorised by this approval must be revegetated and stabilised to prevent erosion either on or adjacent to the land.

Reason: To prevent/contain erosion.

14 (4LD07)

Where development/construction necessitates the pruning of more than 10% of existing tree canopy, a permit application must be lodged with the Council's Civic Services Division, subject to the Tree Preservation Order 2001.

Reason: To ensure those trees are maintained appropriately and compliance with Australian Standard AS 4373:2007 – Pruning of Amenity Trees.

15 (4LD08)

Retain and protect trees and planting on council's Road Reserve during construction.

Reason: To maintain the number of street trees and preserve the amenity of the local area.

16 (4MS04)

An approved Erosion and Sediment Management plan is to be implemented from the commencement of works and maintained until completion of the development.

The design and controls addressed in the Sediment and erosion management plan must comply with the criteria identified in:

- Manly Development Control Plan 2013, Amendment 2, and
- Manly Councils Guidelines for Sediment and Erosion Controls on building sites, 2005, and
- The document "Managing Urban Stormwater: Soils and Construction" Volume 1, 2004.

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

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

**ANS06**

- a) A Project Arborist with minimum qualification equivalent to AQF Level 5 is to be appointed prior to the commencement of works to oversee tree protection measures and works in the vicinity of the existing two (2) Gum trees in close proximity to the front boundary, in accordance with Australian Standard 4970-2009 - Protection of Trees on Development Sites.
- b) The project Arborist shall be on site during excavation for piers and shall provide advice on the final location of piers, as well as depth of excavation.
- b) Details are to be submitted to the Certifying Authority by an Arborist, that this condition has been satisfied, and that the existing tree will survive long term following construction, prior to the issue of the Occupation Certificate.

Reason: To ensure protection of the trees which could be damaged during any development works and to outline the type of protection.



**ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT****17 (6LP01)**

No existing street trees can be removed without Council approval. Where such approval is granted, the trees must be replaced at full cost by the applicant with an advanced tree of a species nominated by Council's relevant officer.

Reason: To encourage the retention of street trees.

**18 (6LP02)**

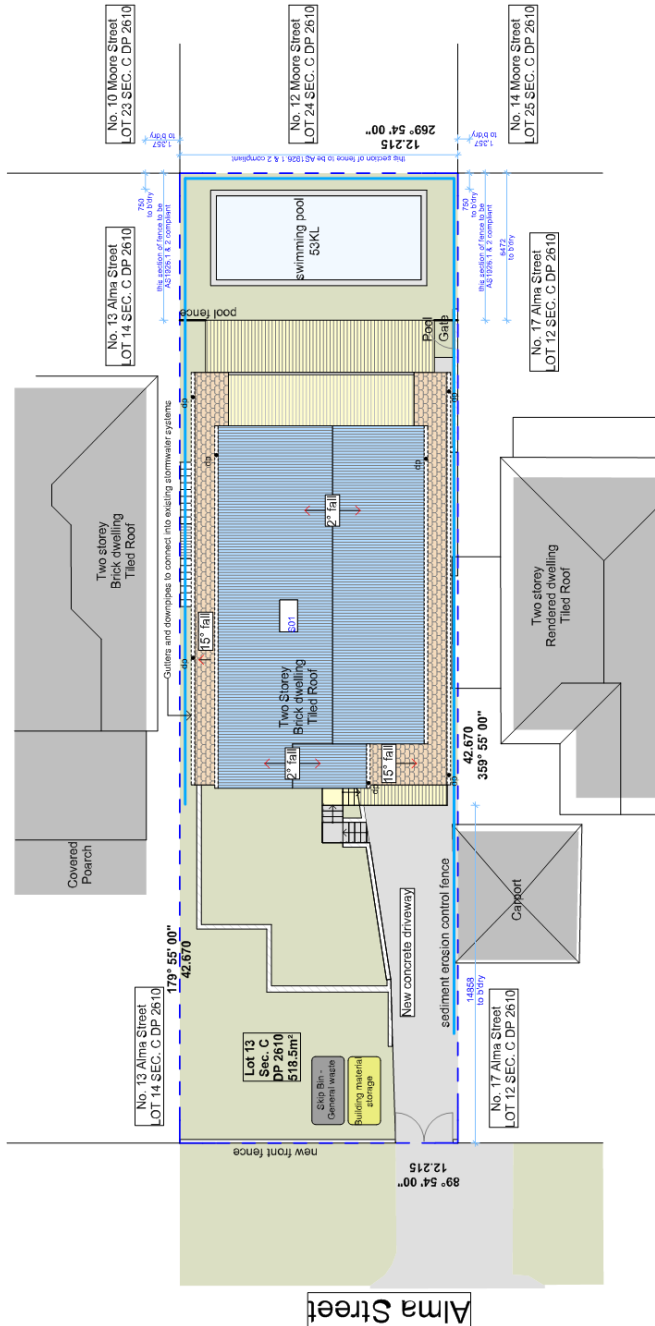
No tree other than on land identified for the construction of buildings and works as shown on the building drawing can be felled, lopped, topped, ringbarked or otherwise wilfully destroyed or removed without the approval of Council.

Reason: To prevent the destruction of trees on other properties adjoining the development site.

**19 (6LP04)**

Leighton Green Cypress Cupressocyparis leylandii or any of its cultivars, must not be planted on the site for the life of the development. In the event of any inconsistency between this condition and the development application documents, this condition will prevail to the extent of the inconsistency.

Reason: To reduce the potential for adverse amenity effects such as overshadowing, loss of views, and loss of plant diversity.



site / roof / sediment erosion / waste management / stormwater concept plan  
1:200 @ A3

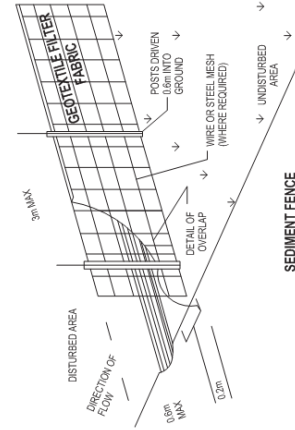
**DUST CONTROL :** GENERATED BY WIND ACTION, THE REMOVAL OF DUST FROM TOP SOILS TO BE MINIMISED, TO PREVENT DUST GENERATION, WATERING DOWN OF THE SITE, ESPECIALLY DURING THE MOVEMENT OF MACHINERY IS REQUIRED, WHERE EXCAVATING INTO ROCK, KEEP THE SURFACE MOIST TO MINIMISE DUST. CONSTRUCT A GRAVEL ENTRY/EXIT POINT USING BLUE METAL AND RESTRICT ALL VEHICLE MOVEMENTS WITHIN THE SITE TO A MINIMUM. ENSURE WIND BREAKS, SUCH AS EXISTING FENCES ARE MAINTAINED DURING THE CONSTRUCTION OF THE UNTIL NEW LANDSCAPING IS COMPLETED FOR THE SITE. PREVENT DUST BY COVERING STOCKPILES.

**SEDIMENT NOTE :** ALL EROSION AND SEDIMENT CONTROL MEASURES TO BE EXPECTED AND MAINTAINED DAILY BY THE SITE MANAGER.  
2. MINIMISE DISTURBED AREAS. REMOVE EXCESS SOIL FROM EXCAVATED AREAS AS SOON AS POSSIBLE.  
3. ALL MATERIAL STOCKPILE TO BE CLEAR FROM DRAINS, GUTTERS AND FOOTPATHS, OR WITHIN SEDIMENT FENCE AREA.  
4. DRAINAGE TO BE CONNECTED TO STORMWATER AS SOON AS POSSIBLE. IF STORED ON SITE, IT MUST BE FILTERED BEFORE RELEASING INTO STORMWATER.  
5. ROADS AND FOOTPATHS TO BE SWEEPED DAILY.

**STOCKPILES :** STOCKPILES ARE TO BE KEPT ON SITE WHERE POSSIBLE. ANY MATERIALS PLACED ON THE FOOTPATHS OR NATURE STRIPS REQUIRE COUNCIL'S PERMISSION.  
ALL STOCKPILES ARE TO BE PLACED AWAY FROM THE DRAINAGE LINES AND STREET GUTTERS. IT IS BEST TO LOCATE THESE ON THE HIGHEST PART OF THE SITE IF POSSIBLE. PLACE WATERPROOF COVERING OVER STOCKPILES.  
IF REQUIRED PROVIDE DIVERSION DRAIN & BANK AROUND STOCKPILES.

**GUTTER PROTECTION :** PROTECT GUTTERS FROM DOWNHILL GRATE IN GUTTERS BY USING SAND BAGS OR BLUE METAL WRAPPED IN GEOTEXTILE FABRIC. WHEN SOIL OR SAND BUILDS UP AROUND THIS SEDIMENT BARRIER, THE MATERIAL SHOULD BE RELOCATED BACK TO THE SITE FOR DISPOSAL.

**Note:** Proposed Stormwater is to connect into the existing on site Stormwater System



## ACTION PLANS

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## LEGEND

TIMBER	CONCRETE
GLASS	EXISTING WALLS
BRICKWORK	TO BE DEMOLISHED
METAL	SEDIMENT EROSION FENCE

## CLIENT

Mr Mike Mallawarachi

## DRAWING NO.

DA02

## DRAWING NAME

SITE / ROOF / SEDIMENT EROSION PLAN

## SCALE

1:100, 1:146, 1:200  
(@ A3)

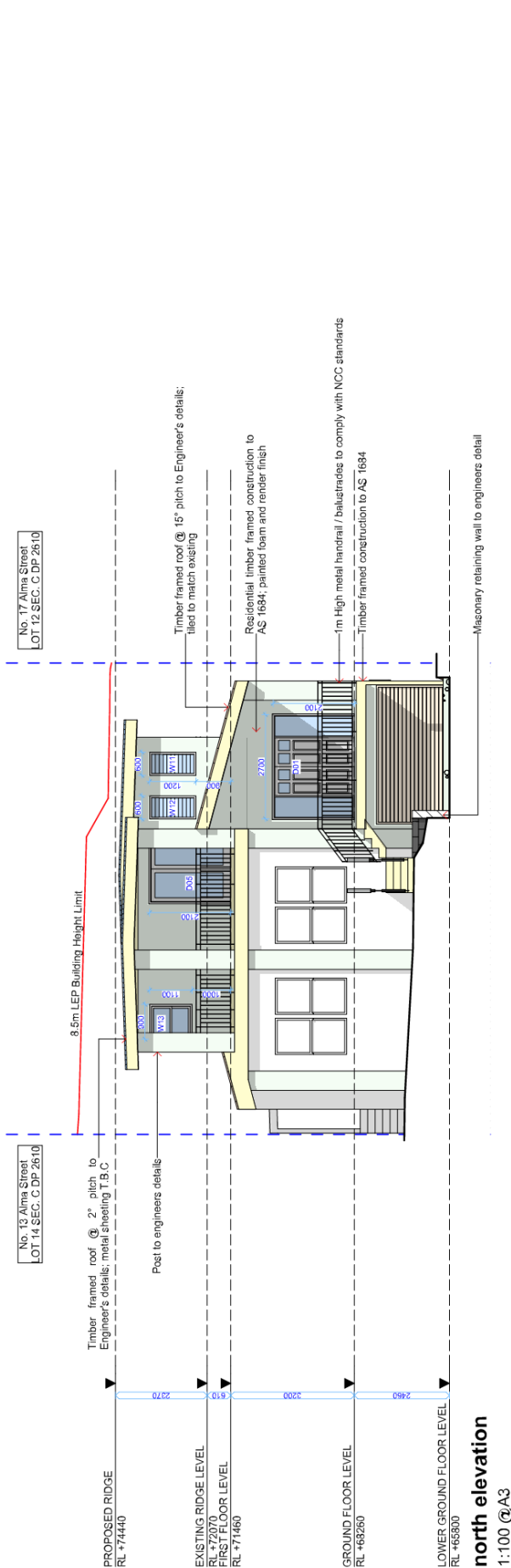
## DATE

Thursday, September 21, 2017

## PROJECT ADDRESS

15 ALMA STREET  
CLONTARF NSW 2033





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LEGEND	
TIMBER	TERRACOTTA ROOF TILES
GLASS	CONCRETE
BRICKWORK	TILES
METAL	EXISTING WALLS

**CLIENT**  
Mr Mike Mallawarachi

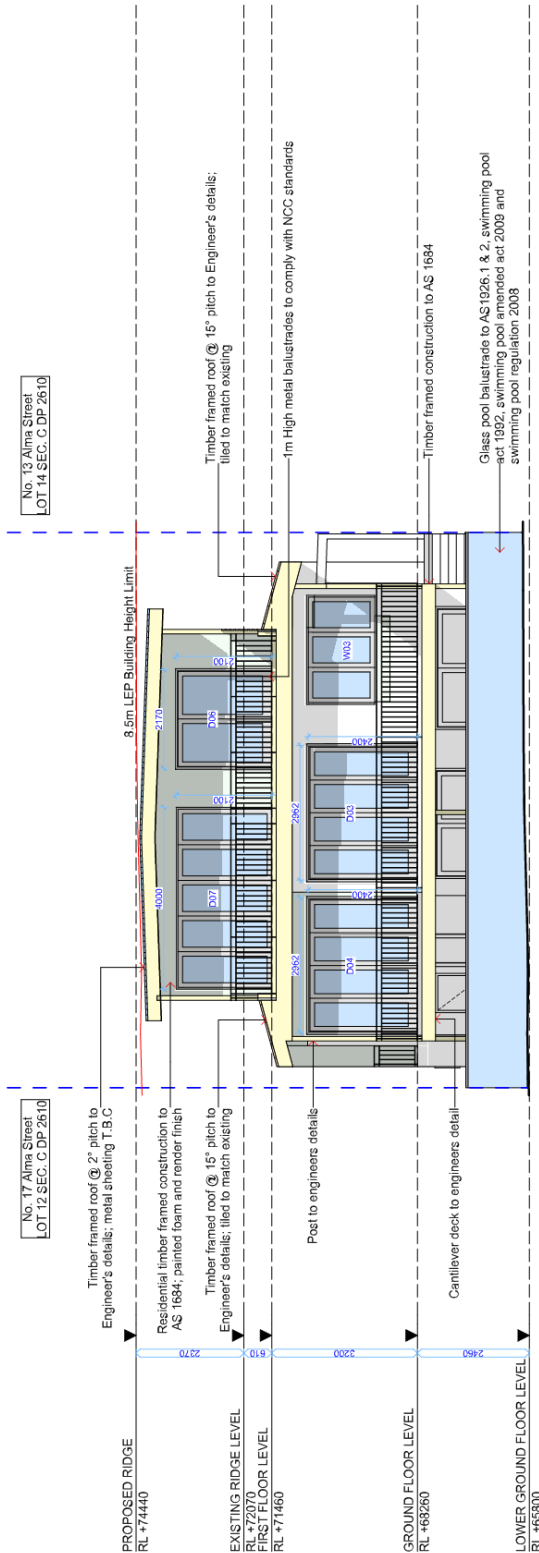
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NSW 2063

**DRAWING NO.**  
DA08

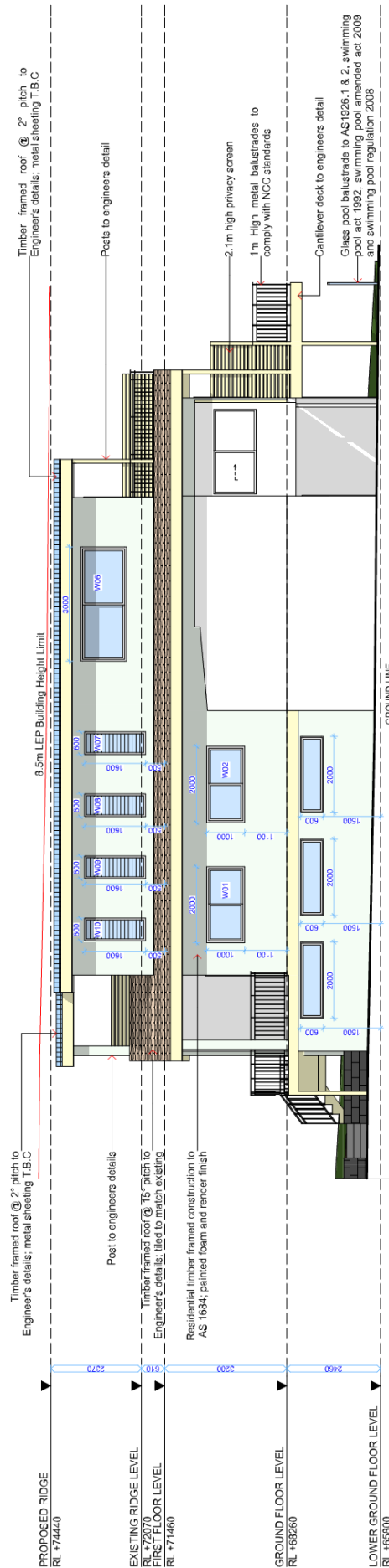
**DATE**  
Thursday, September 21, 2017

**DRAWING NAME**  
NORTH / EAST ELEVATION

**SCALE**  
1:100 @A3



**south elevation**  
1:100 @A3



**west elevation**  
1:100 @A3

**ACTION PLANS**



m: 0403357518  
e: [des@actionplans.com.au](mailto:des@actionplans.com.au)  
w: [www.actionplans.com.au](http://www.actionplans.com.au)

**NOTES**

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**LEGEND**

TIMBER	TERRACOTTA ROOF TILES
GLASS	CONCRETE
BRICKWORK	TILES
METAL	EXISTING WALLS

**CLIENT**

Mr Mike Mallawarachi

**DRAWING NO.**

**DA09**

**DRAWING NAME**

SOUTH / WEST ELEVATION

**SCALE**

1:100 @A3

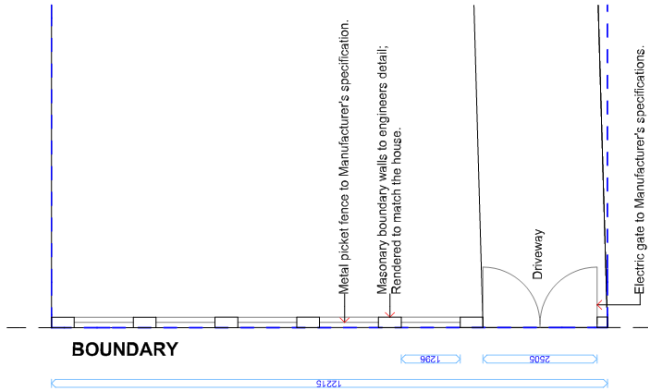
**DATE**

Thursday, September 21, 2017

**PROJECT ADDRESS**

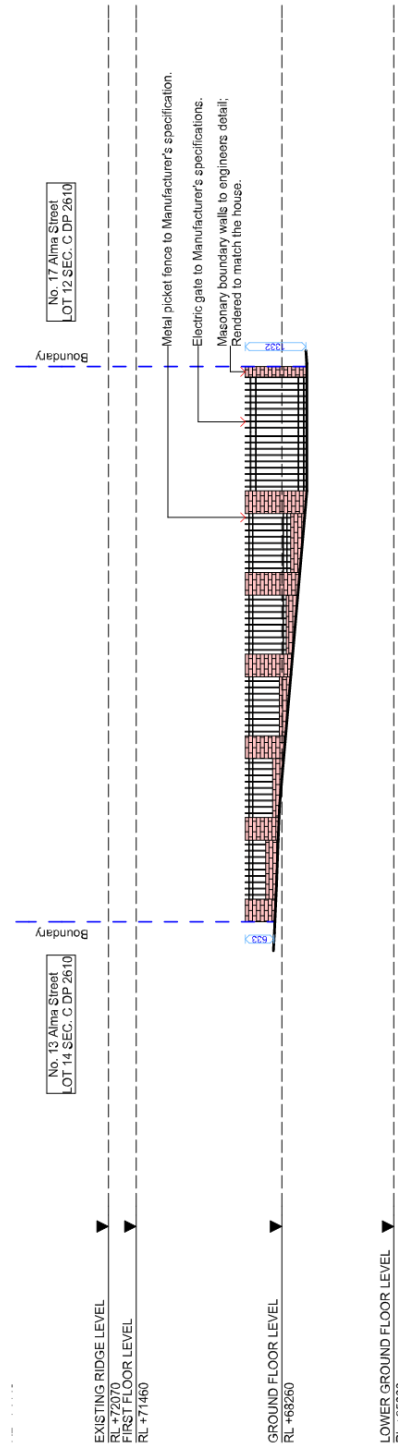
15 ALMA STREET CLONTARF NSW 2063





Proposed front boundary fence to be constructed of masonry piers with metal infill panels. Piers to bear on pad footings which have been hand dug under the supervision of the Consulting Arborist. No strip footings to be provided in order to minimise disturbance to the root zones of the existing trees.

**front fence plan**  
1:100 @A3



**front fence elevation**  
1:100 @A3



**ACTION PLANS**

m: 0403357518  
e: ds@actionplans.com.au  
w: www.actionplans.com.au

**NOTES**

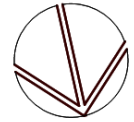
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**LEGEND**

**CLIENT**  
Mr Mike Mallawarachi  
**PROJECT ADDRESS**  
15 ALMA STREET  
CLONTARF NSW 2083

**DRAWING NO.**  
**DA10**  
**DATE**  
Thursday, September 21, 2017

**DRAWING NAME**  
FRONT FENCE PLAN & ELEVATION  
**SCALE**  
1:100 @A3



ITEM 3.3	DA300/2016 - 22-26 ROSEBERRY STREET, BALGOWLAH - SECTION 96(2) TO MODIFY APPROVED DA300/2016 TO EXTEND THE APPROVED DELIVERY HOURS
REPORTING OFFICER	RODNEY PIGGOTT
TRIM FILE REF	2018/278117
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report

### PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel at the discretion of the Executive Manager Development Assessment.

---

### 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. DA300/2016 for Section 96 to modify approved DA300/2016 to extend the approved delivery hours at Lot 1 DP 80929 and Lots 9 and 10 DP 975160, 22-26 Roseberry Street, Balgowlah subject to the conditions and for the reasons set out in the Assessment Report.

---



## Delegated Authority Report

<b>DA #</b>	DA300/2016
<b>Site Address</b>	22-26 Roseberry Street, Balgowlah Lot 1 DP 80929 and Lots 9 and 10 DP 975160
<b>Proposal</b>	Section 96(2) to modify DA300/2016 - Part 4 to extend the approved delivery hours
<b>Officer</b>	Lauren Roberts

### **SUMMARY:**

<b>Application Lodged:</b>	05 December 2017
<b>Applicant:</b>	Milestone (AUST) Pty Limited
<b>Owner:</b>	ALDI Foods Pty Ltd
<b>Estimated Cost:</b>	\$0
<b>Zoning:</b>	MLEP, 2013 – B6 Enterprise Corridor
<b>Heritage:</b>	Not Applicable
<b>NSW LEC:</b>	Not Applicable
<b>Notification:</b>	15 December 2017 – 25 January 2018
<b>Submissions received:</b>	4
<b>Site Inspected:</b>	11 April 2018
<b>LEP (4.6) Variations proposed:</b>	N/A
<b>DCP Variations proposed:</b>	N/A
<b>Recommendation:</b>	Approval

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



The subject property is commonly known as 22-26 Roseberry Street, Balgowlah and legally known as Lot 1 DP 80929 and Lots 9 and 10 DP 975160. The site is located on the eastern side of Roseberry Street. The property is rectangular in shape and has a frontage of 31.6m to Roseberry Street, an average depth of 55m and an overall site area of 3,547.1m<sup>2</sup>. The property currently contains three two-storey commercial developments. The property is relatively level.

The adjacent property to the north, at 28-34 Roseberry Street, is developed with a two-storey commercial development. The property to the south, at 20 Roseberry Street, is developed with a two-storey commercial development. Development in this area of Roseberry Street consists of a mix of commercial uses, including offices, cafés, retail premises and a supermarket.

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

A sewer main bisects the site, running north-south. However, this does not preclude the proposed development.

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

Relevant recent applications on the site include:

- DA100/2011: Demolition of all existing structures and erection of a two-storey warehouse (Bulky goods) development including rooftop car parking. Approved by MIAP on 15 December 2011.
- DA300/2016: Demolition works, consolidation of three (3) lots into one (1), construction of two (2) shops including an Aldi store and signage. Approved by NBIAP on 18 May 2017.
- DA300/2016 – Part 2: Section 96 to modify approved Demolition works, consolidation of three (3) lots into one (1), construction of two (2) shops including an Aldi store and signage. Approved under delegation on 31 August 2017.
- DA300/2016 – Part 3: Section 96(1A) to add one (1) illuminated sign on the western elevation with dimensions of 3240mm height and 4860mm width. Approved under delegation on 19 February 2018.

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

The applications seeks to modify Condition 59(6WM02) relating to the approved delivery hours for the existing ALDI Store (DA300/2016).

Condition No. 59(6WM02) reads as follows:

*“Deliveries and waste collection must only occur during the following hours:*

- *Monday – Saturday: 6.00am – 8.00pm; and*
- *Sundays and Public Holidays: 8.00am – 8.00pm*

*Reason: To minimise disruption to neighbouring properties”*

The proposal seeks to enable delivery hours to occur 24hrs Monday to Sunday including Public Holidays.

No changes are proposed to the existing waste collection hours detailed in Condition 59(6WM02).



### **Internal Referrals**

#### **Environmental Health**

Council's Environmental Health Officer has commented on the proposal as follows:

*"Environmental Health has reviewed the Acoustic report prepared by Wilkinson Murry titled Proposed Aldi Store, Balgowlah Operational Noise Assessment – Section 96 Application, Report No. 99204-BW dated November 2017.*

#### **General operation**

*The report had undertaken the noise assessments from 3 of the closest residential receivers and a commercial receiver. A review of these results indicates compliance with indicative noise amenity residential areas and commercial noise criteria at all receivers during the proposed hours of operation.*

#### **Rooftop Mechanical Plant**

*A condition in the original DA (Condition 11) addresses the rooftop mechanical equipment which states "Mechanical Plant situated on the roof areas of the premise must be acoustically treated to ensure noise emissions are not audible at the nearest residential premise". Environmental Health recommends that this condition to be used in Modification.*

*As advised in the acoustic report mechanical plant should be reviewed at CC stage to ensure that actual plant noise levels are consistent with the assumptions of this assessment.*

#### **Traffic Noise**

*Based on the acoustic report readings traffic noise levels at both Balgowlah and Kenneth Road residences was at 37 dBA. (9-hour night LAeq).*

*The existing noise levels 56 and 55 dBA for Balgowlah Road and Kenneth Road residences respectively, therefore the noise from ALDI trucks on local roads will not increase existing night traffic noise levels at residences.*

*The report does not specify the number of trucks that will be operating during the evening and night period however the report concluded that:*

*" it has been determined that the limited number of vehicles that will pass by residences along Balgowlah and Kenneth Roads will not adversely impact on the acoustic amenity, even when considering night-time movements".*

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

#### **Traffic Comments**

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

### **External Referrals**

No external referrals were considered necessary.

### **Planning Comments**

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

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

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

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

The subject site is located in Zone B6 Enterprise Corridor under the Manly LEP 2013. The proposed development is considered permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

#### **Zone B6 Enterprise Corridor**

##### **Objectives of zone**

- *To promote businesses along main roads and to encourage a mix of compatible uses.*

No changes are proposed to the existing retail use (supermarket) on site, which is compatible with the existing range of retail and commercial uses along Roseberry Street.

- *To provide a range of employment uses (including business, office, retail and light industrial uses).*

The existing retail use will continue to provide a range of employment opportunities for the local area.

- *To maintain the economic strength of centres by limiting retailing activity.*

The proposed modification will see that the existing ALDI store continues to contribute to the economic strength of the centre.

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

There are no principal development standards under Part 4 of the Manly LEP 2013 to consider as part of this assessment.

#### **Part 5 Miscellaneous Provisions**

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

#### **Part 6 Local Provisions**

There are no local provisions under Part 6 of the Manly LEP 2013 to consider as part of this assessment.

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

There is no applicable Draft Planning Instrument.

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

#### **Manly Development Control Plan 2013:**

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

### Part 3 General Principles of Development

Issues	Consistent with principle	Inconsistent with principle
Townscape	✓	
Privacy and Security	✓	
Accessibility	✓	
Waste Management	✓	

### Part 4 - Development Controls

There are no specific development controls applicable to the proposed modification. However, consideration must be given to the potential acoustic impacts from the proposed changes to the delivery hours.

#### 3.4.2.3 Acoustical Privacy (Noise Nuisance)

- Consideration must be given to the protection of acoustical privacy in the design and management of development.*
- Proposed development and activities likely to generate noise including certain outdoor living area like communal areas in Boarding Houses, outdoor open space, driveways, plant equipment including pool pumps and the like should be located in a manner which considers the acoustical privacy of neighbours including neighbouring bedrooms and living areas.*
- Council may require a report to be prepared by a Noise Consultant that would assess likely noise and vibration impacts and may include noise and vibration mitigation strategies and measures. See particular requirements for noise control reports for licenced premises below at paragraph g) below.*

#### Comment:

A review of Councils Complaints Register provides an indication of the premise's ability to maintain amenity, safety and security. A number of complains have been received during the operation and use of the site raising concerns regarding the timing of deliveries and waste collection. In this regard, consideration should be given to the impact of the proposed deliveries on the nearest residential receivers.

An Acoustic Report prepared by a qualified noise consultant was submitted with the development application. The acoustic report provides an assessment of the operational noise impact associated with the store and specifically, deliveries to the site.

The report identifies the nearest residential receivers as being an isolated caretaker accommodation immediately to the south of the site located in a commercial / industrial area; a group of residences 180m to the north of the site (across Kenneth Road) and a group of residences 280m to the south of the site (across Balgowlah Road).

The Acoustic report makes the following conclusions:

*"Background noise monitoring was used to establish the existing noise levels from which project specific noise criteria were derived. These criteria were developed using the EPA's Noise Guide for Local Government and Industrial Noise Policy.*

*The noise assessment has determined that following the implementation of mitigation that:*

- Compliance with established site-specific noise criteria will be achieved at all residential receivers.*

- Compliance with established site-specific noise criteria will be achieved at all commercial receivers.

*As a result of the findings of this assessment it has been determined that no noise mitigation is required to the development and that trucks can deliver goods to this store at any time during the day, evening, and night.*

...

*In the case of noise from delivery trucks along the road network, it has been determined that the limited number of vehicles that will pass by residences along Balgowlah and Kenneth Roads will not adversely impact on the acoustic amenity, even when considering night-time movements”.*

Councils Environmental Health Officer has reviewed the Acoustic report and has no objections to the proposal subject to the imposition of suitable conditions.

A condition requiring that delivery vehicles over 6m in length must approach and depart the site using Condamine Street and enter and exit Roseberry Street to/from Kenneth Road or Hayes Street has been included within the recommendation of this report. Use of Balgowlah Road or Kenneth Road (east of Roseberry Street) to be avoided. This condition seeks to minimise any impact on the residential properties in Balgowlah Road & Kenneth Street.

Having regard to the above, the proposed modification to the delivery hours will not result in offensive noise and is therefore considered acceptable.

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

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

**79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and**  
Not applicable.

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

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

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

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

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

The proposed development as modified by the conditions of consent does not have any unreasonable impact on the natural and built environments or any unreasonable social and economic impacts in the locality.



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

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

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

The application was notified to nearby and adjoining property owners in accordance with Section 2.3 of Council's Development Control Plan 2013 with four (4) submissions received from the following objectors raising the following concerns:

Submission and Address	Main Issues raised in the submission	Comments on submission
1. Deborah Frack	<ul style="list-style-type: none"> <li>Pollutants/runoff</li> <li>Traffic</li> </ul>	<p>Concern is raised in respect to pollutants entering the creek that is located adjacent to the subject site.</p> <p>Deliveries to the site will occur via the existing loading dock (with truck turntable) and access road on the northern side of the main store building. Existing drainage systems on site will continue to manage stormwater and runoff from the site.</p> <p>This matter does not warrant refusal of the application.</p> <p>Concern is raised regarding the existing peak traffic conditions. A survey has also been requested along surrounding streets including Roseberry Street.</p> <p>It is noted that the existing delivery hours are Monday-Sunday 6.00am – 8.00pm; and Sundays and Public Holidays: 8.00am – 8.00pm. The existing delivery hours include peak traffic times before and after normal business hours. The extended 24hr delivery hours will allow for greater flexibility of delivery times outside of peak morning and evening traffic times.</p> <p>The proposed modification does not warrant a survey of use of surrounding streets. Any traffic planning/Traffic Investigations at Roseberry Street should be directed to Councils Transport and Civil - Traffic team.</p> <p>Councils Traffic Officer has reviewed the proposed modification to the delivery hours and has no objection to the proposal.</p> <p>This matter does not warrant refusal of the application.</p>
2. Phillip Dawson 34/41 Roseberry Street	<ul style="list-style-type: none"> <li>Excess Noise</li> </ul>	<ul style="list-style-type: none"> <li>Concern is raised regarding the excess noise generated by trucks passing by the residential properties at night time.</li> </ul>

<p>3. Rachael Shupe 44 / - 41 Roseberry ST</p>		<p>A detailed assessment of noise is included within Part 4 - Development Controls section of this report.</p> <p>In summary, the Acoustic report confirms that <i>'in the case of noise from delivery trucks along the road network, it has been determined that the limited number of vehicles that will pass by residences along Balgowlah and Kenneth Roads will not adversely impact on the acoustic amenity, even when considering night-time movements.'</i></p> <p>Councils Traffic Officer has reviewed the Acoustic Report and has no objection to the proposal.</p> <p>This matter does not warrant refusal of the application.</p>
<p>4. Gayle Graham</p>	<ul style="list-style-type: none"> <li>• Traffic Congestion</li> </ul>	<ul style="list-style-type: none"> <li>• Concern is raised in regard to traffic congestion and the impact deliveries over a 24hr period will have on the local area including the B Line commuter car park and additional retail units that have recently opened.</li> </ul> <p>Concern is also raised is regards to the dangers associated with the existing car parking spots along Roseberry Street near Balgowlah Road.</p> <p>As mentioned previously within this report, the extended 24hr delivery hours will allow for greater flexibility of delivery times outside of peak morning and evening traffic times.</p> <p>Councils Traffic Officer has reviewed the proposed modification to the delivery hours and has no objection to the proposal.</p> <p>The proposed 24hr delivery hours will not impact upon the existing car parking along Roseberry Street near Balgowlah Road.</p> <p>This matter does not warrant refusal of the application.</p>

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

The proposed modifications to the approved development are in the public interest.

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

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

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

Comments:

In this case, the proposed modification to the approved development will not require the provision of or increase the demand for public amenities and public services in the area. As such, the payment of a monetary contribution is not required.

**Section 96 (2) of the Environmental Planning and Assessment Act 1979**

**(2) Other modifications**

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and
- (c) it has notified the application in accordance with:
  - (i) the regulations, if the regulations so require, or
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.
- (4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

With regard to the above it is considered that the proposed modifications to the original consent, will result in substantially the same development for which consent was originally granted. The modifications requested were notified in accordance with Council's Manly DCP with four (4) submissions received. All matters relating to the proposed modifications in terms of impact on the environment have been considered. On balance, the proposed modifications are considered to be satisfactory for approval, subject to conditions.

#### CONCLUSION:

The application has been assessed having regard to Section 79C and Section 96 of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory for approval, subject to conditions.

This report is referred to the Northern Beaches Local Planning Panel for determination at the discretion of the Executive Manager Development Assessment.

#### RECOMMENDATION

THAT Council as the consent authority grant **approval** to Modification Application No. Mod300/2016/4 for Modification of Development Consent DA2016/300 granted for Demolition works, consolidation of three (3) lots into one (1), construction of two (2) shops including an Aldi store and signage on land at Lot 1 DP 80929 & Lots 9 and 10 DP 975160; 22-26 Roseberry Street, Balgowlah, subject to the conditions printed below:

#### GENERAL CONDITIONS

**The following Condition No.1 is to be amended as per Section 96(2) Application – Part 4:**

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

*Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. 300/2016:*

Plan No. / Title	Issue/ Revision & Date	Date Received by Council
DA-01 Site Plan	Issue F 25 October 2016	31 October 2016
DA-02 Ground Car Parking Plan	Issue D 25 October 2016	31 October 2016
DA-03 First Floor Plan	Issue B 19 October 2016	31 October 2016
DA-05 Roof Plan	Issue B 19 October 2016	31 October 2016
DA-07 Existing Site and Demo Plan	Issue A 30 September 2016	31 October 2016
DA-10 Elevations	Issue D 19 October 2016	31 October 2016
DA-15 Sections	Issue B 5 October 2016	31 October 2016
DA001 Landscape Concept Plan	Issue A 21 October 2016	31 October 2016

*Reference Documentation relating to Development Consent No. 300/2016:*

- Statement of Environmental Effects prepared by Milestone (AUST) Pty Limited dated October 2016 and received by Council on 31 October 2016
- Traffic Report prepared by Colston Budd Rogers & Kafes Pty Ltd dated October 2016 and received by Council on 31 October 2016
- Traffic Report prepared by Colston Budd Rogers & Kafes Pty Ltd dated 6 February 2017 and received by Council on 8 February 2017
- Traffic Report prepared by Colston Budd Rogers & Kafes Pty Ltd dated 6 April 2017 and received by Council on 10 April 2017
- BCA and Accessibility Statement prepared by Steve Watson & Partners dated 26 -- September 2016 and received by Council on 31 October 2016



- Preliminary Geotechnical Investigation prepared by JK Geotechnics dated 21 October 2016 and received by Council on 31 October 2016
- Remediation Action Plan prepared by Douglas Partners dated October 2011 and received by Council 31 October 2016
- Stage 1 Environmental Site Assessment & Additional Soil Assessment prepared by EIS Environmental

Except as amended by:

*Drawings affixed with Council's 'Development Consent' stamp relating to this Section 96(1A) Application – Part 3 – determined 19 February 2018:*

Plan No. / Title	Issue/ Revision & Date	Prepared By
DA-01 Site Plan	Rev. G 13 November 2017	Conrad Gargett
DA-10 Elevations	Rev. E 13 November 2017	Conrad Gargett

Except as amended by:

*Reference Documentation relating to this Section 96(2) Application – Part 4:*

- **Statement of Environmental Effects** prepared by Milestone (AUST) Pty Limited dated 4 December 2017.
- **Operational Noise Assessment – S96 Application** prepared by Wilkinson Murray dated 16 November 2017 (Version A).

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

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

The following Condition No. 59 (6WM02) is to be amended as per Section 96(1) – Part 4:

59 (6WM02)

Waste collection must only occur during the following hours:

- Monday – Saturday: 6:00am – 8:00pm
- Sundays and Public Holidays: 8:00am – 8:00pm

Reason: To minimise disruption to neighbouring properties.

The following Condition No. 59A is added as per Section 96(1) – Part 4:

59A

Deliveries shall occur during the following hours:

- Monday-Sunday including Public Holidays 24 hours

Reason: To minimise disruption to neighbouring properties.

The following Condition No. 59B is added as per Section 96(1) – Part 4:

59B

Delivery vehicles over 6m in length must approach and depart the site using Condamine Street and enter and exit Roseberry Street to/from Kenneth Road or Hayes Street. Use of Balgowlah Road or Kenneth Road (east of Roseberry Street) to be avoided.

Reason to minimise impacts upon residential premises in Balgowlah Road & Kenneth Street

**ITEM 3.4**

**N0512/17 - 69-71 CENTRAL ROAD, AVALON BEACH -  
DEMOLITION OF EXISTING DWELLINGS AND CONSTRUCTION  
OF A 12 UNIT SENIORS LIVING DEVELOPMENT WITH  
BASEMENT PARKING, LANDSCAPING AND STRATA  
SUBDIVISION**

**REPORTING OFFICER MATTHEW EDMONDS**

**TRIM FILE REF 2018/278411**

**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. N0512/17 for Demolition of existing dwellings and construction of a 12 unit Seniors Living development with basement parking, landscaping and strata subdivision at Lots 15 & 16 DP 8698, 69-71 Central Road, Avalon Beach subject to the conditions and for the reasons set out in the Assessment Report.

---

**SUBJECT: N0512/17 – 69-71 Central Road, AVALON BEACH NSW 2107**  
Demolition of existing dwellings and construction of a 12 unit Seniors Living development with basement parking, landscaping and strata subdivision

---

**SUMMARY OF RECOMMENDATION:** REFUSAL

---

<b>REPORT PREPARED BY:</b>	Angela Manahan
<b>APPLICATION SUBMITTED ON:</b>	09 November 2017
<b>APPLICATION SUBMITTED BY:</b>	R. WHITTAKER C/- GARTNER TROVATO ARCHITECTS PO BOX 1122, MONA VALE NSW 2103
<b>OWNER(S):</b>	Mr Raymond Chang Mrs Bei Jiang
<b>COST OF WORKS:</b>	\$5,295,201.00
<b>NO. OF SUBMISSIONS:</b>	Twenty (20)
<b>DETERMINATION LEVEL:</b>	Local Planning Panel

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## 1.0 SITE DETAILS

The proposed development is located over two (2) separate allotments, legally referred to as Lots 15 and 16 of Deposited Plan 8698, and known as 69 and 71 Central Road, Avalon Beach ("the site"). Lot 15 has an area of approximately 1182m<sup>2</sup> and Lot 16 has an area of approximately 1184m<sup>2</sup>, which when consolidated form a total site area of 2366m<sup>2</sup>.

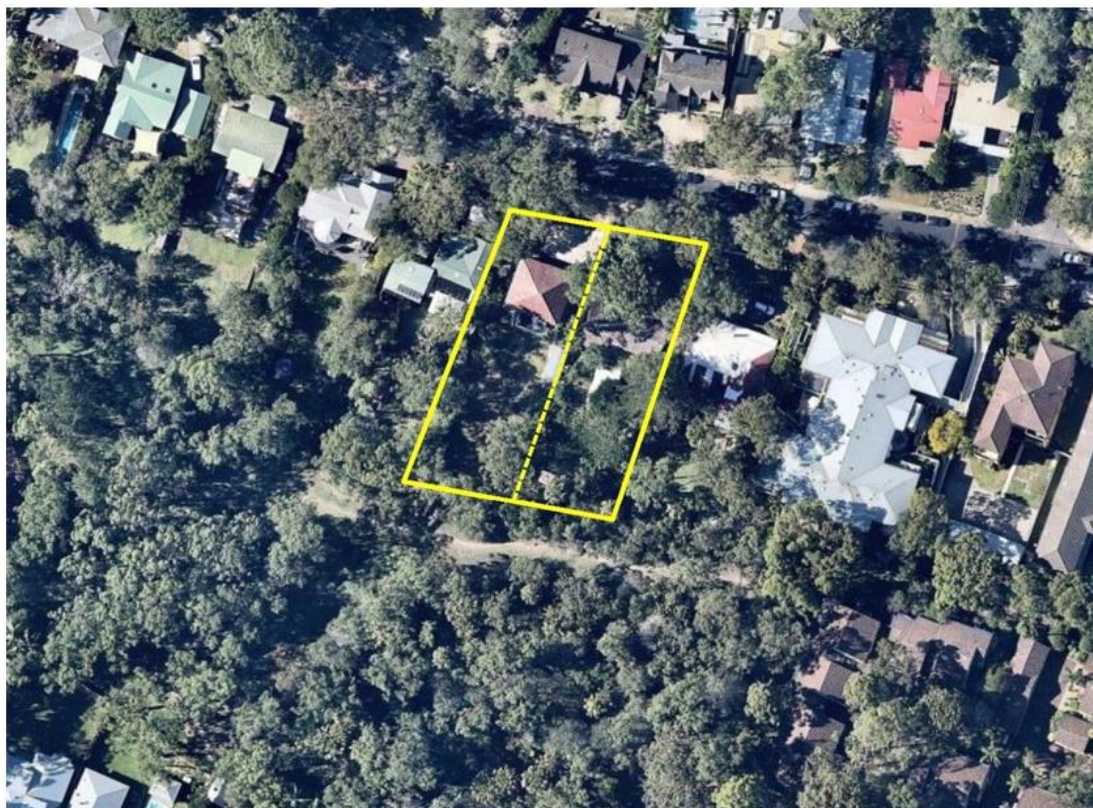


Figure 1 – An aerial photograph of the subject sites (outlined in yellow Border).  
Source: NearMap



69 Central Road (Lot 15) is generally rectangular in shape, with an angled front and rear boundary. Vehicular and pedestrian access is gained via the 20.41m wide frontage to Central Road. The site experiences a fall of 4.75m from the northern front boundary down towards the southern rear boundary, with an average slope of approximately 8.18%. The site is currently occupied by a single dwelling and a secondary dwelling to the rear. Several canopy trees are located within the front and rear portion of the site, predominantly along the eastern boundary.

71 Central Road (lot 16) is also generally rectangular in shape, with an angled front and rear boundary. Vehicular and pedestrian access is gained via the 20.45m wide frontage to Central Road. The site experiences a fall of 5.06m from the northern front boundary down towards the southern rear boundary, with an average slope of approximately 9.16%. The site is currently occupied by a single dwelling and outbuilding to the rear.

The site is located on the southern side of Central Road and shall have a combined frontage to Central Road of 40.86m. The site shall have an overall slope of approximately 7.6%. The site is predominantly surrounded by low-density residential properties to the north, east and west, and adjoins Council owned Toongari Reserve to the south. An existing seniors housing development, approved under SEPP 5, is located at 63-65 Central Road and a retirement village (Pittwater Palms) is located to the far south-east of the site.

## 2.0 PROPOSED DEVELOPMENT

The applicant seeks consent for the following works:

- Demolition of all existing structures on the site;
- Construction of twelve (12) self-contained dwellings and basement carparking, as follows:
  - Basement Level  
Thirteen (13) carparking spaces, storage areas and service area;
  - Ground Floor Level
    - Partially below ground carparking comprising seven (7) carparking spaces and two (2) visitor spaces, one (1) designated carwash area, Bin Store, Storage areas, Common Area with WC, Services/Plant Room, Lobby and Entrance Foyer;
    - Three (3) x three (3) Bedroom adaptable residential units (located within the southern portion of the site);
  - First Floor Level  
Six (6) x three (3) Bedroom adaptable residential units (three (3) located at ground level, within the northern portion of the site, and three (3) located at first floor level, within the southern portion of the site), and Lobby area;
  - Second Floor Level  
Three (3) x three (3) Bedroom adaptable residential units, within the northern portion of the site, and Lobby area;
- Tree removal;
- Earthworks and excavation;
- Associated landscaping;
- Strata subdivision.

The proposed development is located within two (2) buildings, one (1) within the northern portion of the site, comprising six (6) units and one (1) building to the central/southern portion of the site, comprising six (6) units.

Whilst not specified within the Statement of Environmental Effects or on the application form, it is noted that the application also requires considerable works within the road reserve area, including the provision of a footpath beyond the frontage of the site to the existing bus stop, associated drainage and kerb and guttering works, and a set of stairs. Whilst these works will require a separate application to Council, pursuant to the *Roads Act 1993*, the proposed seniors housing development is reliant upon these works to achieve consistency with the provisions of *State*



*Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*. As such these works and any associated impacts have also been considered as part of this application.

It is also noted that the application requires works to be undertaken within Toongari reserve to facilitate the proposed stormwater management. The application has been referred to the relevant Council departments with regards to these works, and is considered as part of this application.

### 3.0 LEGISLATION, PLANS AND POLICIES

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

- Environmental Planning and Assessment Act, 1979 (the Act)
- Environmental Planning and Assessment Regulation 2000 (the Regulation)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX)
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD)
- State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)
- Pittwater Local Environmental Plan 2014 (PLEP 2014)
  - Acid Sulphate Soils Map – Class 4 and Class 5
  - Biodiversity Map
  - Geotechnical Hazard Map
  - Height of Buildings Map – 8.5m
  - Lot Size Map – 700m<sup>2</sup>
- Pittwater 21 Development Control Plan (P21 DCP)
  - Avalon Beach Locality
  - Geotechnical Risk Management Policy for Pittwater
  - Flood Risk Management Policy for Development in Pittwater.

P21 DCP identifies the land as being the following:

- Landslip Prone;
- Flood Prone;
- Wildlife Corridor.

#### Variation to development standards:

The application of clause 4.6 or SEPP 1 is not required.

### 4.0 PERMISSIBILITY

The subject sites (being Lot 15 and Lot 16 in DP 8698) are both zoned R2 – Low Density Residential under the Pittwater Local Environmental Plan 2014. Pursuant to the Land Use Table in Part 2 of this instrument, Seniors Housing is not permissible development within the R2 zone.

However, the Applicant seeks consent for the proposed development pursuant to *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* which allows for a Seniors Housing Development on land where it may otherwise be prohibited. Clause 4 of the SEPP (HSPD) specifies that the policy applies to land within NSW that is zoned primarily of urban purposes but only if dwelling houses are permissible on that land.

While development for the purpose of a dwelling house is permitted on the subject sites, and as such clause (4)(1) of SEPP HSPD is satisfied, clause (4)(6) of SEPP HSPD identifies land to which the policy does not apply. Clause (4)(6) states that the policy does not apply to the following:

- (a) land described in Schedule 1 (Environmentally sensitive land),

Environmental sensitive land is identified by Schedule 1 of SEPP HSPD, as follows:

*Land identified in another environmental planning instrument by any of the following descriptions or by like descriptions or by descriptions that incorporate any of the following words or expressions:*

...  
(i) natural hazard,  
...

Clause 7.7 (Geotechnical Hazards) of PLEP 2014 applies to the land (both allotments) and the land is identified as "Geotechnical Hazard H2" on the Geotechnical Hazard Map of PLEP 2014. Legal advice previously obtained by Council confirms that a geotechnical hazard is appropriately described as a "natural hazard", as identified in Schedule 1. As geotechnical hazards are mapped by an environmental planning instrument, the subject land is considered to be "environmentally sensitive land" in accordance with Schedule 1.

In response to Council's interpretation of the provisions of clause (4)(6) of SEPP HSPD, the Applicant provided separate legal advice regarding whether the SEPP HSPD applies to the Land having regard to clause 4(6)(a) and Schedule 1.

The matter for consideration is whether a "geotechnical hazard" can be described as being, or like, a "natural hazard". The Applicant's legal advice acknowledges that if a geotechnical hazard is a "like description" of a natural hazard then the SEPP HSPD does not apply and the proposed development would be prohibited.

The Applicant argues that the expression "geotechnical hazard" is not a like description of a "natural hazard" as it could be a natural or manmade hazard. The Applicant's advice states that this is supported by the PLEP mapping which recognises "man-made" or "natural" geotechnical hazards, categorised as H1 and H2. (It should be noted that the markings of "W" on the H1 land and "AE" on the H2 land have no relevance or reference to PLEP 2014 and are considered to be in relation to the letter codes and colours stipulated by the Standard Instrument, with the "W" identifying Geotechnical Hazard H1 and "AE" identifying Geotechnical Hazard H2 ).

The advice states that land which is identified as H2 ("AE") are hazards resulting from manmade geotechnical hazards, whereas land identified as H1 ("W") are hazards resulting from natural landform. However, this is inaccurate. The PLEP 2014 Geotechnical Hazard Map provides several examples of road embankments (considered by the Applicant to be manmade) which are identified as H1 and natural occurrences, such as sand dunes, being identified as H2. The H1 ("W") and H2 ("AE") relate solely to the risk associated with the geotechnical hazard and have no relevance to the type of hazard. Furthermore, PLEP 2014 in no way differentiates between any types of geotechnical hazard, being natural or man-made, and only identifies land subject to a geotechnical hazard. As such it is considered that the Applicant's legal argument is defective.

PLEP 2014 clause 7.7 includes provisions for development on land susceptible to geotechnical hazards. As outlined above PLEP 2014 does not provide separate definitions on the type of geotechnical hazard with clause 7.7 applying to all geotechnical hazard land. Clause 7.7 requires Council to consider the geotechnical and landslip risks associated with the site in the assessment of development and determination of development applications. It is council's opinion that land mapped as being subject to a Geotechnical hazard can be sufficiently identified as environmentally sensitive land, and it is considered that "geotechnical hazard" meets the definition and intent of a "natural hazard".

As such Council contends that the geotechnical hazard is appropriately described as a natural hazard. Pursuant to the provisions of clause (4)(6) of SEPP HSPD, the policy cannot be applied to the subject sites. In view of the above, the proposed development, being Seniors Housing, is prohibited development and Council has no authority to grant development consent to the proposed development. It is also noted that the area identified as being subject to the Geotechnical

hazard is the entire front portion of the site and any development would require access over this area. As such the development relies on the portion of land identified as a geotechnical hazard.

Notwithstanding the above, a full assessment of the proposed development has been undertaken to determine whether the proposal would be supported if permissible.

## 5.0 BACKGROUND

A search of Council's records has revealed that there are no recent or relevant applications for the site. The land has been used for residential purposes for an extended period of time.

### 09 November 2017

Development Application N0512/17 was lodged with Council. The application was internally referred to the following:

- Development Engineer
- Specialist Floodplain Engineer
- Natural Environment Officer
- Tree Assessment Officer
- Senior Landscape Architect
- Property Department
- Parks Assets – Planning Design and Delivery Department
- Traffic Engineer
- Roads Assets Department
- Section 94 Contributions Officer.

### 16 February 2018

In response to concerns raised by Council on 23 January 2018 regarding the permissibility of the development in relation to the geotechnical hazard of the site, the Applicant provided supporting legal advice as additional information.

## 6.0 ADVERTISEMENT AND NOTIFICATION

The application was advertised in the newspaper and notified to twelve (12) adjoining property owners for a minimum period of fourteen (14) days from 14 November through to 02 December 2017 in accordance with Council's Notification Policy. During this time, twenty (20) submissions in total were received. Six (6) submissions did not identify a property address and therefore it is unknown whether any these submissions were received on or behalf of the same dwelling.

The submissions raised concerns with regard to the following:

- Bulk and scale;
- Overdevelopment of the site;
- Compatibility with the surrounding area and streetscape;
- Visual impact;
- 3 storey nature of the development (as viewed from the street);
- Front Building Line;
- Elevated driveway;
- Non-compliance with height (SEPP HSPD);
- Density and non-compliance with FSR;
- Impact upon the Natural Environment and tree removal;
- Impact upon Wildlife Corridor and habitat;
- Landscaping and non-compliance with Landscaped Area;
- Traffic and parking, including safety concerns and increased congestion;
- Noise and pollution;
- Construction Management;
- Flooding;

- Impacts upon residential amenity;
- Visual privacy;
- View Loss;
- Acoustic privacy;
- Solar Access.

Site visits were undertaken to the following properties:

- 67 Central Road
- 73 Central Road
- 142 Central Road
- 146 Central Road.

## 7.0 ISSUES

Assessment of the application has found that aspects of the proposed development are non-compliant with the technical requirements of the following controls:

### State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

- Clause 26 - Location and access to facilities
- Clause 29 - Site compatibility criteria to which clause 24 does not apply
- Clause 31 - Design of in-fill self-care housing
- Clause 32 - Design of residential development
- Clause 33 - Neighbourhood amenity and streetscape
- Clause 34 - Visual and acoustic privacy
- Clause 35 - Solar access and design for climate
- Clause 38 - Accessibility
- Clause 40(4)- Height in zones where residential flat buildings are not permitted
- Clause 50(a) - Building Height
- Clause 50(b) - Density and Scale
- Clause 50(e) – Solar Access
- Clause 50(h) - Parking

### Pittwater Local Environmental Plan 2014

- 4.3 Height of Buildings
- 7.1 Acid Sulfate Soils
- 7.3 Flood Planning
- 7.6 Biodiversity

### Pittwater 21 Development Control Plan

- A4.1 Avalon Beach Locality
- B3.11 Flood Prone Land
- B4.6 Wildlife Corridors
- B5.10 Stormwater Discharge into Public Drainage System
- B6.3 Off-Street Vehicle Parking Requirements
- B6.7 Transport and Traffic Management
- B8.6 Construction and Demolition - Traffic Management Plan
- C1.1 Landscaping
- C1.4 Solar Access
- C1.5 Visual Privacy
- C1.6 Acoustic Privacy
- C1.7 Private Open Space
- C1.15 Storage Facilities



- C1.21 Seniors Housing
- C1.24 Public Road Reserve - Landscaping and Infrastructure
- D1.1 Character as viewed from a public place
- D1.4 Scenic protection – General
- D1.8 Front building line
- D1.9 Side and rear building line
- D1.11 Building envelope
- D1.14 Landscaped Area - Environmentally Sensitive Land

The issues, non-compliances and areas of concern are identified in the following compliance tables and are discussed in greater detail further in the report.

## **8.0 STATE ENVIRONMENTAL PLANNING POLICY (HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY) 2004**

C - Can the proposal satisfy the technical and performance requirements of the clause?

Clause	Standard	Proposal	C
<b>Chapter 1 - Preliminary</b>			
2. Aims of Policy	<p>(1) This Policy aims to encourage the provision of housing (including residential care facilities) that will:</p> <ul style="list-style-type: none"> <li>(a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and</li> <li>(b) make efficient use of existing infrastructure and services, and</li> <li>(c) be of good design.</li> </ul> <p>(2) These aims will be achieved by:</p> <ul style="list-style-type: none"> <li>(a) setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and</li> <li>(b) setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and</li> <li>(c) ensuring that applicants provide support services for seniors or people with a disability for developments on land adjoining land zoned primarily for urban purposes.</li> </ul>		Y
4. Land to which the Policy applies	<p>This Policy applies to land within NSW that is land zoned primarily for urban purposes or land that adjoins land zoned primarily for urban purposes, but only if development for the purpose of dwelling houses is permitted on the land.</p> <p>This policy does not apply to land</p>	<p>The subject site is zoned for residential development with dwelling houses identified as being permissible within the land use table of PLEP14. However, as discussed in Section 4.0 of the report, the proposed development is considered to be environmentally sensitive land as identified in Schedule 1 and as</p>	N

Clause	Standard	Proposal	C
	described in Schedule 1 (Environmentally sensitive land).	such the policy is not applicable.	
<b>Chapter 2 – Key Concepts</b>			
13. Self-contained dwellings	<p><u>self-contained dwelling</u> In this Policy, a <i>self-contained dwelling</i> is a dwelling or part of a building (other than a hostel), whether attached to another dwelling or not, housing seniors or people with a disability, where private facilities for significant cooking, sleeping and washing are included in the dwelling or part of the building, but where clothes washing facilities or other facilities for use in connection with the dwelling or part of the building may be provided on a shared basis.</p> <p><u>in-fill self-care housing</u> In this Policy, <i>in-fill self-care housing</i> is seniors housing on land zoned primarily for urban purposes that consists of 2 or more self-contained dwellings where none of the following services are provided on site as part of the development: meals, cleaning services, personal care, nursing care.</p>	The proposed development comprises twelve (12) self-contained dwellings that are appropriately defined as “in-fill self-care housing”.	Y
<b>Chapter 3 – Development for seniors housing</b>			
<b>Part 1 – General</b>			
14. Objective of Chapter	The objective of this Chapter is to create opportunities for the development of housing that is located and designed in a manner particularly suited to both those seniors who are independent, mobile and active as well as those who are frail, and other people with a disability regardless of their age.		Y
15. What Chapter does	This Chapter allows for development on land zoned primarily for urban purposes for any form of seniors housing despite the provisions of any other environmental planning instrument if the development is carried out in accordance with this Policy.	<p>The proposed development is not permissible pursuant to the provisions of PLEP14.</p> <p>See discussion in Section 4.0 regarding permissibility.</p>	Y
16. Development consent required	Development allowed by this Chapter may be carried out only with the consent of the relevant consent authority unless another environmental planning instrument allows that development without consent.	The proposed development requires consent from Northern Beaches Council.	Y

Clause	Standard	Proposal	C
18. Restrictions on occupation of seniors housing allowed under this chapter	<p>(1) Development allowed by this Chapter may be carried out for the accommodation of the following only:</p> <ul style="list-style-type: none"> <li>(a) seniors or people who have a disability,</li> <li>(b) people who live within the same household with seniors or people who have a disability,</li> <li>(c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.</li> </ul> <p>(2) A consent authority must not consent to a development application made pursuant to this Chapter unless:</p> <ul style="list-style-type: none"> <li>(a) a condition is imposed by the consent authority to the effect that only the kinds of people referred to in subclause (1) may occupy any accommodation to which the application relates, and</li> <li>(b) the consent authority is satisfied that a restriction as to user will be registered against the title of the property on which development is to be carried out, in accordance with section 88E of the <i>Conveyancing Act 1919</i>, limiting the use of any accommodation to which the application relates to the kinds of people referred to in subclause (1).</li> </ul>	In the event that the application were supported, it would be possible to impose conditions to restrict the use in line with the requirement of this clause and to specify that these restrictions form a restriction on the title of the land.	Y
21. Subdivision	Land on which development has been carried out under this chapter may be subdivided with the consent of the consent authority.	<p>The applicant seeks consent for the consolidation of the two existing lots and strata subdivision of the resultant development however, no information has been provided in this regard.</p> <p>Subdivision of any approved development can be undertaken separately at a later stage of the development process.</p> <p>Should the application be approved, a condition of consent is recommended to ensure a separate application for the strata subdivision of the development.</p>	Y
<b>Part 1A – Site compatibility certificates</b>			
24. Site compatibility certificates	<p>Applicable where:</p> <ul style="list-style-type: none"> <li>(a) the site adjoins land zoned for urban purposes, special uses or used for the purposes of an existing registered club; or</li> </ul>	A site compatibility statement has not been provided and is not required in this instance.	-

Clause	Standard	Proposal	C
	(b) applies for buildings with a floor space ratio which requires consent under clause 45		
<b>Part 2 – Site-related requirements</b>			
26. Location and access to facilities	<p>The consent authority must be satisfied, by written evidence, that residents of the proposed development will have compliant access to:</p> <ul style="list-style-type: none"> <li>(a) shops, bank service providers and other retail and commercial services that residents may reasonably require, and</li> <li>(b) community services and recreation facilities, and</li> <li>(c) the practice of a general medical practitioner.</li> </ul>	<p>There are two (2) existing bus stops within 400m of the subject site, located on Central Road, providing access to the facilities and services described within this clause. However, it is noted that there is no existing footpath to either bus stop and concern is raised with the ability to provide access to the existing bus stops.</p> <p>See discussion further in report.</p>	N
28. Water and sewer	The consent authority is satisfied, by written evidence, that the housing will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage	The proposed self-contained dwellings will utilise the services currently connected to the subject site.	Y
29. Site compatibility criteria to which clause 24 does not apply	<p>Applies to development not subject to clause 24.</p> <p>A consent authority must take into consideration and have regard for the criteria referred to in clause 25 (5) (b) (i), (iii) and (v) which state:</p> <ul style="list-style-type: none"> <li>• 25(5)(b)(i) the natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development,</li> <li>• 25(5)(b)(iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision,</li> <li>• 25(5)(b)(v) without limiting any other criteria, 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.</li> </ul>	<p>The applicant has not provided sufficient justification to demonstrate that the development will not result in any unreasonable impacts upon the natural environment, particularly with regards to the safe retention of existing canopy trees.</p> <p>The applicant has not demonstrated that the proposal meets the requirements of Clause 26, in that adequate access to services is not provided.</p> <p>The proposal will result in a development that is inconsistent with the existing and desired future character of the locality, and built form controls identified by P21 DCP and this policy.</p>	N
<b>Part 3 – Design requirements</b>			
30. Site analysis	The consent authority must not grant consent unless the consent authority is	The applicant has undertaken an analysis of the site and the	Y



Clause	Standard	Proposal	C
	satisfied that the applicant has taken into account a site analysis prepared by the applicant in accordance with this clause.	surrounding context which is detailed in the Statement of Environmental Effects.	
31. Design of in-fill self-care housing	The consent authority must take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration) the provisions of the <i>Seniors Living Policy: Urban Design Guideline for Infill Development</i> published by the Department of Infrastructure, Planning and Natural Resources in March 2004.	Compliance with this guideline is discussed further below.	N
32. Design of residential development	A consent authority must not consent to a development application unless satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2.	The proposed development is inconsistent with a number of design principles identified in Division 2 of this policy.	N
<b>Division 2 Design Principles</b>			
33. Neighbourhood amenity and streetscape	<p>The proposed development should:</p> <ul style="list-style-type: none"> <li>(a) recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area, and</li> <li>(b) retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and</li> <li>(c) maintain reasonable neighbourhood amenity and appropriate residential character by: <ul style="list-style-type: none"> <li>(i) providing building setbacks to reduce bulk and overshadowing, and</li> <li>(ii) using building form and siting that relates to the site's land form, and</li> <li>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and</li> <li>(iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours.</li> </ul> </li> </ul>	<p>As discussed in further detail with regards to Clause A4.1 of P21 DCP, the proposal is not considered to be consistent with the desired future character of the Avalon Beach Locality.</p> <p>The proposal has not demonstrated that a reasonable neighbourhood amenity has been maintained, and the resultant development is not considered to reflect an appropriate residential character.</p> <p>The proposal results in non-compliant setbacks to the front and side boundaries attributing to excessive bulk and scale, and unreasonable amenity impacts upon the adjoining properties.</p> <p>The front setback is not sympathetic to the existing building or characteristic of the area which provides buildings with large setbacks to the street frontage.</p> <p>The height of the development, in conjunction with the non-compliant front and side setbacks is not a compatible scale with adjacent development.</p> <p>Furthermore, the minimal front setback does not permit any adequate canopy tree planting on the site, with the proposal requiring the</p>	N

Clause	Standard	Proposal	C
	<ul style="list-style-type: none"> <li>(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, and</li> <li>(e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and</li> <li>(f) retain, wherever reasonable, major existing trees, and</li> <li>(g) be designed so that no building is constructed in a riparian zone.</li> </ul>	removal of several significant trees.	
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> <ul style="list-style-type: none"> <li>(a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and</li> <li>(b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.</li> </ul>	<p>As discussed in clause C1.5 of P21 DCP, concern is raised regarding the location of the private open space and balconies of the front units, which are all located within the front of the site.</p> <p>As discussed in clause C1.6 of P21 DCP, the proposal results in unreasonable impacts upon the adjoining properties with regards to acoustic privacy. The proposed driveway is located in close proximity to the neighbouring bedroom.</p>	N
35. Solar access and design for climate	<p>The proposed development should:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(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.</li> </ul>	<p>The site is generally orientated north-south and as such the living rooms of the units within the front building should maximise the amount of sunlight received in these areas. However, the units located to the rear will predominantly be overshadowed by the front northern building and concern is raised with the solar access received by these units.</p> <p>As such the application fails to demonstrate that a reasonable level of solar access is achieved to these units. In these circumstances, elevational shadow diagrams are required to adequately demonstrate the extent of solar access received inside each dwelling.</p>	N
36. Stormwater	<p>The proposed development should:</p> <ul style="list-style-type: none"> <li>(a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-</li> </ul>	The application requires connection of the proposed stormwater system to the existing council stormwater line in the adjoining reserve which shall require an easement to be created. Council's Property department and Parks and	Y

Clause	Standard	Proposal	C
	pervious material, minimising the width of paths and minimising paved areas, and (b) include, where practical, on-site stormwater detention or re-use for second quality water uses.	Recreation Unit support the proposed stormwater management. Council's Development Engineer raises no concerns in this regard, subject to conditions of consent.	
37. Crime prevention	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by: (a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and (b) where shared entries are required, providing shared entries that serve a small number of dwellings and that are able to be locked, and (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.	Views of the common areas of the site would be possible from the proposed units providing casual surveillance. Furthermore, the units within the front building shall have observation of the street and driveway. Each Lobby area within the development serves three (3) units which is considered acceptable. The proposed dwellings shall largely be able to view the Lobby areas from within the dwelling.	Y
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 layout of the carpark does not provide any separate access for pedestrians, however it is considered that there is adequate space for vehicles and pedestrians to manoeuvre throughout the area to the lift and vertical circulation space.  Separate pedestrian access is provided from the frontage of the site to the individual units.  See further discussion with regard to Clause 26 of this policy in relation to obvious and safe pedestrian links to public transport facilities.	N
39. Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	The proposed dwellings will have access to shared waste and recycling facilities.  Overall, the proposed development is considered to achieve consistency with the waste management design principle identified by this policy.	Y
<b>Part 4 – Development standards to be complied with</b>			
40. Development standards – minimum sizes and building heights	(1) A consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this clause.		

Clause	Standard	Proposal	C
	(2) <b>Site size</b> The size of the site must be at least 1,000m <sup>2</sup> .	The combined lots have a total site area of 2366m <sup>2</sup> .	Y
	(3) <b>Site frontage</b> The site frontage must be at least 20 metres wide measured at the building line.	The site has a combined frontage of 40.86m as measured at the proposed building line.	Y
	(4) <b>Height</b> 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 (c) a building located in the rear 25% area of the site must not exceed 1 storey in height.	Residential flat buildings are not permitted on the subject site.  As currently proposed, the proposed development exceeds 8m in height, being a maximum of 8.3m as measured between the existing ground level and the ceiling of the topmost floor.  It is noted that the ground floor car park, lobby and entrance level are partially located above existing ground level. However, in accordance with the interpretation of a "storey", it is considered that the carparking level (adjacent to the site boundaries) shall extend a maximum of 1m above the existing ground level, and does not constitute a storey. As such the development shall be a maximum of 2 storey in height, above existing ground level.  Only ground floor terrace areas are located within the rear 25% of the site.	N
41. Standards for hostels and self-contained dwellings	A consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purpose of a hostel or self-contained dwelling unless the proposed development complies with the standards specified in Schedule 3 for such development.	The proposed development is consistent with the development standards identified by Schedule 3 of SEPP HSPD.	Y
<b>Part 7 – Development standards that cannot be used as grounds to refuse consent</b>			
46. Inter-relationship of Part with design principals in Part 3	Nothing in this Part permits the granting of consent to a development application made pursuant to this Chapter if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3.	The submitted documentation demonstrates that these principles have been considered, however it is not agreed that the development appropriately reflects these principles.	Y
50. Standards that cannot be used to refuse development consent for self-contained dwellings	A consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a self-contained dwelling (including in-fill self-care housing and serviced self-care housing) on any of the following grounds:		
	(a) <b>building height:</b>	As currently proposed, the	N



Clause	Standard	Proposal	C
	if all proposed buildings are <b>8 metres</b> or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys),	development is above 8 metres as measured from existing ground level.  See further discussion with regard to building height below.	
	(b) <b>density and scale:</b> if the density and scale of the buildings when expressed as a floor space ratio is <b>0.5:1</b> or less	The Floor Space Ratio is calculated to be 0.59:1 or approximately 1417.23m <sup>2</sup> . This figure excludes all terraces and internal Lobby areas which are only partially enclosed.  The non-compliant FSR directly attributes to the bulk and scale of the building. See discussion further in report.	N
	(c) <b>landscaped area:</b> if: (i) in the case of a development application made by a social housing provider-a minimum 35 square metres of landscaped area per dwelling is provided, or (ii) in any other case-a minimum of <b>30%</b> of the area of the site is to be landscaped.	The development application is not made by a social housing provider.  The proposed development is able to provide landscaping areas in excess of 30% of the site. As such, the proposed development must not be refused based on landscaping calculations.	Y
	(d) <b>Deep soil zones:</b> if, in relation to that part of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed, there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than <b>15%</b> of the area of the site (the <b>deep soil zone</b> ).  Two-thirds of the deep soil zone should preferably be located at the rear of the site and each area forming part of the zone should have a minimum dimension of 3 metres	The basement levels are primarily located within the front portion of the site and as such the rear of the site will remain generally free from development, allowing for deep soil planting areas in excess of 15% of the site.	Y
	(e) <b>solar access:</b> if living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of <b>3 hours</b> direct sunlight between 9am and 3pm in mid-winter	A minimum of nine (9) units are required to receive a minimum of 3 hours of direct sunlight between 9am and 3pm in midwinter. It is considered that the orientation of the site will allow the front six (6) units to receive good solar access in accordance with the requirements. However, concern is raised regarding the ability of the rear units to receive direct solar access. At this stage, the applicant has not satisfactorily demonstrated compliance with this control, as given	N

Clause	Standard	Proposal	C
		the orientation of the site, the rear units will be overshadowed by the front building. Furthermore, the living areas within the rear units are predominantly located to the southern side of the dwelling.	
	<p>(f) <b>private open space for in-fill self-care housing:</b> if:</p> <p>(i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and</p> <p>(ii) in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area,</p>	Each of the units comply with the minimum requirements of this control.	Y
	<p>(h) <b>parking:</b> if at least the following is provided:</p> <p>(i) 0.5 car spaces for each bedroom where the development application is made by a person other than a social housing provider, or</p> <p>(ii) 1 car space for each 5 dwellings where the development application is made by, or is made by a person jointly with, a social housing provider.</p>	For the thirty-six (36) Bedrooms proposed (12 x 3 bedroom units), the clause requires eighteen (18) car parking spaces overall to be provided. Twenty-six (26) spaces, including two (2) visitor spaces are provided and the development numerically complies with the requirement.	Y
<b>Schedule 3 – Standards concerning accessibility and useability for hostels and self-contained dwellings</b>			
<b>Part 1 – Standards applying to hostels and self-contained dwellings</b>			
2. Siting standards	<p>(1) <b>Wheelchair access</b> If the whole of the site has a gradient of less than 1:10, 100% of the dwellings must have wheelchair access by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road.</p> <p>(3) <b>Common areas</b> Access must be provided in accordance with AS 1428.1 so that a person using a wheelchair can use common areas and common facilities</p>	<p>The proposed development provides wheelchair access from each dwelling to Central Road.</p> <p>The proposed development provides wheelchair access to all common areas and facilities.</p>	Y

Clause	Standard	Proposal	C
	associated with the development.		
3. Security	Pathway lighting: (a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and (b) must provide at least 20 lux at ground level.	While no lighting of pathways or common areas is shown, this could form the subject of a condition of consent in the event that the application were supported.	Y
4. Letterboxes	Letterboxes: (a) must be situated on a hard standing area and have wheelchair access and circulation by a continuous accessible path of travel (within the meaning of AS 1428.1), and (b) must be lockable, and (c) must be located together in a central location adjacent to the street entry or, in the case of self-contained dwellings, must be located together in one or more central locations adjacent to the street entry.	Letterboxes are shown to be located adjacent to the site's northern entry gate.  In the event that the application were supported, a condition of consent could be included to ensure that the requirements of this clause are met.	Y
5. Private car accommodation	If car parking (not being car parking for employees) is provided: (a) car parking spaces must comply with the requirements for parking for persons with a disability set out in AS 2890, and (b) 5% of the total number of car parking spaces (or at least one space if there are fewer than 20 spaces) must be designed to enable the width of the spaces to be increased to 3.8 metres, and (c) any garage must have a power-operated door, or there must be a power point and an area for motor or control rods to enable a power-operated door to be installed at a later date.	The proposed development requires eighteen (18) residential parking spaces as per Clause 50(h). As currently proposed none of the parking spaces provided are identified as being designed in accordance with AS2890.6, however, the Accessibility report confirms that the car parking can achieve compliance with the requirement.	Y
6. Accessible entry	Every entry (whether a front entry or not) to a dwelling, not being an entry for employees, must comply with clauses 4.3.1 and 4.3.2 of AS 4299.	The proposed entrance to the building and each individual dwelling is considered consistent with 4.3.1 and 4.3.2 of AS 4299.  In the event that the application were supported, a condition of consent could be included to ensure that the requirements of this clause are met.	Y
7. Interior: general	(1) Internal doorways must have a minimum clear opening that complies with AS 1428.1. (2) Internal corridors must have a minimum unobstructed width of 1,000 millimetres.	In the event that the application were supported, a condition of consent could be included to ensure that the requirements of this clause are met.	Y

Clause	Standard	Proposal	C
	(3) Circulation space at approaches to internal doorways must comply with AS 1428.1.		
8. Bedroom	<p>At least one bedroom within each dwelling must have:</p> <ul style="list-style-type: none"> <li>(a) an area sufficient to accommodate a wardrobe and a bed sized as follows: <ul style="list-style-type: none"> <li>(i) in the case of a dwelling in a hostel—a single-size bed,</li> <li>(ii) in the case of a self-contained dwelling—a queen-size bed, and</li> </ul> </li> <li>(b) a clear area for the bed of at least: <ul style="list-style-type: none"> <li>(i) 1,200 millimetres wide at the foot of the bed, and</li> <li>(ii) 1,000 millimetres wide beside the bed between it and the wall, wardrobe or any other obstruction, and</li> </ul> </li> <li>(c) 2 double general power outlets on the wall where the head of the bed is likely to be, and</li> <li>(d) at least one general power outlet on the wall opposite the wall where the head of the bed is likely to be, and</li> <li>(e) a telephone outlet next to the bed on the side closest to the door and a general power outlet beside the telephone outlet, and</li> <li>(f) wiring to allow a potential illumination level of at least 300 lux.</li> </ul>	<p>Each apartment includes at least one bedroom which is capable of meeting these requirements.</p> <p>In the event that the application were supported, a condition of consent could be included to ensure that the requirements of this clause are met.</p>	Y
9. Bathroom	<p>(1) At least one bathroom within a dwelling must be on the ground (or main) floor and have the following facilities arranged within an area that provides for circulation space for sanitary facilities in accordance with AS 1428.1:</p> <ul style="list-style-type: none"> <li>(a) a slip-resistant floor surface,</li> <li>(b) a washbasin with plumbing that would allow, either immediately or in the future, clearances that comply with AS 1428.1,</li> <li>(c) a shower that complies with AS 1428.1, except that the following must be accommodated either immediately or in the future: <ul style="list-style-type: none"> <li>(i) a grab rail,</li> <li>(ii) portable shower head,</li> <li>(iii) folding seat,</li> </ul> </li> </ul>	<p>Each apartment includes at least one bathroom which is capable of meeting these requirements.</p> <p>In the event that the application were supported, a condition of consent could be included to ensure that the requirements of this clause are met.</p>	Y



Clause	Standard	Proposal	C
	(d) a wall cabinet that is sufficiently illuminated to be able to read the labels of items stored in it, (e) a double general power outlet beside the mirror. (2) Subclause (1) (c) does not prevent the installation of a shower screen that can easily be removed to facilitate future accessibility.		
10. Toilet	A dwelling must have at least one toilet on the ground (or main) floor and be a visitable toilet that complies with the requirements for sanitary facilities of AS 4299.	Each apartment includes at least one WC which is capable of meeting these requirements.  In the event that the application were supported, a condition of consent could be included to ensure that the requirements of this clause are met.	Y
11. Surface finishes	Balconies and external paved areas must have slip-resistant surfaces.	In the event that the application were supported, a condition of consent could be included to ensure that the requirements of this clause are met.	Y
12. Door hardware	Door handles and hardware for all doors (including entry doors and other external doors) must be provided in accordance with AS 4299.	In the event that the application were supported, a condition of consent could be included to ensure that the requirements of this clause are met.	Y
13. Ancillary items	Switches and power points must be provided in accordance with AS 4299.	In the event that the application were supported, a condition of consent could be included to ensure that the requirements of this clause are met.	Y
<b>Part 2 – Additional standards for self-contained dwellings</b>			
15. Living room and dining room	(1) A living room in a self-contained dwelling must have: (a) a circulation space in accordance with clause 4.7.1 of AS 4299, and (b) a telephone adjacent to a general power outlet. (2) A living room and dining room must have wiring to allow a potential illumination level of at least 300 lux.	The proposed development was accompanied by an Access Report which confirms that the proposal is able to achieve consistency with this clause.  In the event that the application were supported, a condition of consent could be included to ensure that the requirements of this clause are met.	Y
16. Kitchen	A kitchen in a self-contained dwelling must have: (a) a circulation space in accordance with clause 4.5.2 of AS 4299, and (b) a circulation space at door approaches that complies with AS 1428.1, and (c) the following fittings in accordance with the relevant subclauses of clause 4.5 of AS 4299: I. benches that include at least one work surface at least 800 millimetres in length that comply with clause 4.5.5 (a), II. a tap set (see clause 4.5.6),	The proposed development was accompanied by an Access Report which confirms that the proposal is able to achieve consistency with this clause.  In the event that the application were supported, a condition of consent could be included to ensure that the requirements of this clause are met.	Y

Clause	Standard	Proposal	C
	<p>III. cooktops (see clause 4.5.7), except that an isolating switch must be included,</p> <p>IV. an oven (see clause 4.5.8), and</p> <p>(d) "D" pull cupboard handles that are located towards the top of below-bench cupboards and towards the bottom of overhead cupboards, and</p> <p>(e) general power outlets:</p> <p>I. at least one of which is a double general power outlet within 300 millimetres of the front of a work surface, and</p> <p>II. one of which is provided for a refrigerator in such a position as to be easily accessible after the refrigerator is installed.</p>		
17. Access to kitchen, main bedroom, bathroom and toilet	In a multi-storey, self-contained dwelling, the kitchen, main bedroom, bathroom and toilet must be located on the entry level.	Each of the proposed apartments are of a single level design.	Y
18. Lifts in multi-storey buildings	In a multi-storey building containing separate self-contained dwellings on different storeys, lift access must be provided to dwellings above the ground level of the building by way of a lift complying with clause E3.6 of the <i>Building Code of Australia</i> .	<p>The two storey building includes lift access to the upper level.</p> <p>In the event that the application were supported, a condition of consent could be included to ensure that the requirements of this clause are met.</p>	Y
19. Laundry	<p>A self-contained dwelling must have a laundry that has:</p> <p>(a) a circulation space at door approaches that complies with AS 1428.1, and</p> <p>(b) provision for the installation of an automatic washing machine and a clothes dryer, and</p> <p>(c) a clear space in front of appliances of at least 1,300 millimetres, and</p> <p>(d) a slip-resistant floor surface, and</p> <p>(e) an accessible path of travel to any clothes line provided in relation to the dwelling.</p>	<p>The proposed development was accompanied by an Access Report which confirms that the proposal is able to achieve consistency with this clause.</p> <p>In the event that the application were supported, a condition of consent could be included to ensure that the requirements of this clause are met.</p>	Y
20. Storage for linen	A self-contained dwelling must be provided with a linen storage in accordance with clause 4.11.5 of AS 4299.	<p>The proposed development was accompanied by an Access Report which confirms that the proposal is able to achieve consistency with this clause.</p> <p>In the event that the application were supported, a condition of consent could be included to ensure that the</p>	Y

Clause	Standard	Proposal	C
		requirements of this clause are met.	
21. Garbage	A garbage storage area must be provided in an accessible location.	The proposed development was accompanied by an Access Report which confirms that the proposal is able to achieve consistency with this clause.  In the event that the application were supported, a condition of consent could be included to ensure that the requirements of this clause are met.	Y

## 9.0 COMPLIANCE TABLE: PITTWATER LEP 2014 AND PITTWATER 21 DCP

T - Can the proposal satisfy the technical requirements of the control?

O - Can the proposal achieve the control outcomes?

N - Is the control free from objection?

Control	Standard	Proposal	T	O	N
<b>Pittwater Local Environmental Plan 2014</b>					
1.9A Suspension of covenants, agreements and instruments			Y	Y	Y
2.6 Subdivision - consent requirements			Y	Y	Y
2.7 Demolition requires development consent			Y	Y	Y
Zone R2 Low Density Residential		See discussion in Section 4.0.	N	Y	Y
4.1 Minimum subdivision lot size			-	-	-
4.2A Minimum subdivision lot size for strata plan schemes in certain rural, residential and environment protection zones			-	-	-
4.3 Height of buildings		See discussion in Section 10.0.	Y	N	N
4.6 Exceptions to development standards			-	-	-
5.9 Preservation of trees or vegetation			Y	Y	Y
5.10 Heritage conservation			Y	Y	Y
7.1 Acid sulfate soils		See discussion in Section 10.0.	Y	Y	Y
7.2 Earthworks			Y	Y	Y
7.3 Flood Planning		See discussion in Section 10.0.	Y	Y	N
7.6 Biodiversity protection		See B4.6 of P21 DCP for further discussion.	N	N	N
7.7 Geotechnical hazards			Y	Y	Y
7.10 Essential services			Y	Y	Y
<b>Pittwater 21 Development Control Plan 2014</b>					
A1.7 Considerations before consent is granted			Y	Y	Y
A4.1 Avalon Beach Locality		See discussion in Section 10.0.	N	N	Y
A5.1 Exhibition, Advertisement and Notification of Applications			Y	Y	Y
B1.3 Heritage Conservation - General			Y	Y	Y
B1.4 Aboriginal Heritage Significance		No apparent issues	Y	Y	Y
B2.2 Subdivision - Low Density Residential Areas			-	-	-
B3.1 Landslip Hazard			Y	Y	Y

Control	Standard	Proposal	T	O	N
B3.6 Contaminated Land and Potentially Contaminated Land			Y	Y	Y
B3.11 Flood Prone Land		See discussion in Section 10.0.	Y	Y	N
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)			Y	Y	-
B3.13 Flood Hazard - Flood Emergency Response planning			Y	Y	-
B4.6 Wildlife Corridors		See discussion in Section 10.0.	N	N	N
B5.1 Water Management Plan			Y	Y	Y
B5.4 Stormwater Harvesting			Y	Y	Y
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential			Y	Y	Y
B5.10 Stormwater Discharge into Public Drainage System		See discussion in Section 10.0.	Y	Y	Y
B5.12 Stormwater Drainage Systems and Natural Watercourses			Y	Y	Y
B5.14 Stormwater Drainage Easements (Public Stormwater Drainage System)			Y	Y	Y
B6.1 Access driveways and Works on the Public Road Reserve			Y	Y	Y
B6.2 Internal Driveways			Y	Y	Y
B6.3 Off-Street Vehicle Parking Requirements		See discussion in Section 8.0.	Y	Y	N
B6.6 On-Street Parking Facilities			-	-	-
B6.7 Transport and Traffic Management		See discussion in Section 10.0.	N	N	N
B8.1 Construction and Demolition - Excavation and Landfill			Y	Y	Y
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.3 Construction and Demolition - Waste Minimisation			Y	Y	Y
B8.4 Construction and Demolition - Site Fencing and Security			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
B8.6 Construction and Demolition - Traffic Management Plan		See discussion in Section 10.0.	Y	Y	N
C1.1 Landscaping		See discussion in Section 10.0.	N	N	N
C1.2 Safety and Security			Y	Y	Y
C1.3 View Sharing			Y	Y	Y
C1.4 Solar Access		See discussion in Section 10.0.	Y	Y	N
C1.5 Visual Privacy		See discussion in Section 10.0.	Y	N	N
C1.6 Acoustic Privacy		See discussion in Section 10.0.	N	N	N
C1.7 Private Open Space		See discussion in Section 10.0.	N	N	Y
C1.9 Adaptable Housing and Accessibility			Y	Y	Y
C1.10 Building Facades			Y	Y	Y
C1.12 Waste and Recycling Facilities			Y	Y	Y
C1.13 Pollution Control			Y	Y	Y
C1.15 Storage Facilities		See discussion in Section 10.0.	N	N	Y



Control	Standard	Proposal	T	O	N
C1.18 Car/Vehicle/Boat Wash Bays			Y	Y	Y
C1.20 Undergrounding of Utility Services			Y	Y	Y
C1.21 Seniors Housing		See discussion in Section 10.0.	N	N	Y
C1.23 Eaves			Y	Y	Y
C1.24 Public Road Reserve - Landscaping and Infrastructure		See discussion in Section 10.0.	N	N	Y
C1.25 Plant, Equipment Boxes and Lift Over-Run			Y	Y	Y
D1.1 Character as viewed from a public place		See discussion in Section 10.0.	N	N	Y
D1.4 Scenic protection - General		See discussion in Section 10.0.	N	N	Y
D1.5 Building colours and materials			Y	Y	Y
D1.8 Front building line		See discussion in Section 10.0.	N	N	N
D1.9 Side and rear building line		See discussion in Section 10.0.	N	N	N
D1.11 Building envelope		See discussion in Section 10.0.	N	N	Y
D1.14 Landscaped Area - Environmentally Sensitive Land		See discussion in Section 10.0.	N	N	N
D1.15 Fences - General			Y	Y	Y
D1.17 Construction, Retaining walls, terracing and undercroft areas			Y	Y	Y
<b>State Environmental Planning Policies and other</b>					
SEPP (Building Sustainability Index: BASIX) 2004			Y	Y	Y
EPA Act 1979 No 203 section 147 Disclosure of political donations and gifts			Y	Y	Y

## 9.0 DISCUSSION OF ISSUES

### **ACCESSIBILITY AND WORKS WITHIN THE ROAD RESERVE AREA**

- **Clause 26 - Location and access to facilities of SEPP (HSPD)**
- **Clause 29 - Site compatibility criteria to which clause 24 does not apply of SEPP (HSPD)**
- **Clause 38 - Accessibility of SEPP (HSPD)**
- **Clause C1.24 Public Road Reserve - Landscaping and Infrastructure of P21 DCP**

Clause 26(1) of SEPP HSPD identifies that the consent authority must be satisfied, by written evidence, that residents of the resultant development will have access to necessary services. Clause 38 of SEPP HSPD also identifies that the proposal must provide obvious and safe pedestrian links from the site that provide access to public transport services or local facilities.

Clause 26(2) specifies that access is seen to comply with Clause 26(1) of SEPP HSPD if:

*....b) in the case of a proposed development on land in a local government area within the Sydney Statistical Division—there is a public transport service available to the residents who will occupy the proposed development:*

- that is located at a distance of not more than 400 metres from the site of the proposed development and the distance is accessible by means of a suitable access pathway, and*
- that will take those residents to a place that is located at a distance of not more than 400 metres from the facilities and services referred to in subclause (1), and*
- that is available both to and from the proposed development at least once between 8am and 12pm per day and at least once between 12pm and 6pm each day from Monday to Friday (both days inclusive), and the gradient along*

*the pathway from the site to the public transport services (and from the public transport services to the facilities and services referred to in subclause (1)) complies with subclause (3).*

Clause 26(4) defines a suitable access pathway as follows:

*a **suitable access pathway** is a path of travel by means of a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like.*

The application was supported by an Accessibility report which states that the development relies upon the provisions of clause 26(2)(b) regarding access to a public transport service, and that appropriate transport is provided to the required services via the public bus network. Furthermore, the public bus stop is approximately 110m from the proposed development, with an average gradient of 1:35.

There is currently no footpath on the southern side of Central Road adjoining the site or along the frontages to the existing bus stop. The application does not specifically seek consent for any works within the road reserve area, which would be subject to a separate application pursuant to the *Roads Act 1993*, however in order to meet the requirements of clause 26(2) and clause 38, works will be required to be undertaken in the road reserve area in order to provide a suitable access pathway.

Council's Development Engineer concurred that the development would require the construction of a footpath from the development site to the existing bus stop to the east of the site, located adjacent to 61 Central Road. Council's Development Engineer noted that the footpath will require the removal of a number of street trees. Furthermore, the footpath is to be constructed adjacent to the existing dish drain that runs along the edge of bitumen, and it is considered that the dish drain be replaced with standard kerb and gutter to protect pedestrians.

The application was referred to Council's Transport & Civil Infrastructure Assets department for comment and/or recommendations regarding the likely works required to be undertaken in the road reserve area.

Council's Transport & Civil Infrastructure Assets Manager concurred with the comments from Council's Development Engineer regarding the replacement of dish gutter/mountable kerb with a and gutter to protect pedestrians and maintain a clear path of travel (ie prevent cars parking on footpath). The following advice was also provided:

*Given there is already a footpath on the opposite side of Central Road, the priority for Council to have footpath on the south side of the carriageway is considered a low priority and given the impact on streetscape and street trees is not necessarily desirable. However, the need for pedestrian access for seniors is noted and considered an important aspect.*

The construction of the footpath on the southern side of Central Road from the development to the bus stop is required in order to meet the requirements of clause 26 of SEPP (HSPD), noting that there are no bus stops on the northern side of Central Road to service the development. As such Council's Transport & Civil Infrastructure Assets Manager provided the following additional comments, in the event that pedestrian access is essential to the development:

*Of concern is the provision of a 2m wide pathway and the impact on street trees. It would appear a 2m wide footpath is unachievable (based on a desktop assessment of topography using street view) and would require the removal of at least 6 trees. If the footpath is connected to the stairway (and I think this is justified), then an additional 6 trees would require removal. A 1.5m wide footpath would be acceptable and reduce the requirement for retaining walls and associated earthworks and would limit other potential tree removals.*

*The removal of trees and the Arborist report should be review and commented on by Council's Tree Management Officer.*

The application was also referred to Council's Tree Assessment Officer for comment regarding tree removal on Council land as a result of the footpath construction who provided the following comments:

*The required footpath would likely result in the loss of at least nine (9) native trees, of which seven (7) are relatively significant and all of which contribute to the character of the area. The resultant loss of trees would be significant and negative given that the footpath would prohibit replacement plantings. The development would result in a significant loss of canopy within the area with limited opportunity for compensatory plantings to offset the loss.*

As detailed under the Traffic and Parking discussion, Council's Transport Network Department also raised concerns regarding the construction of the footpath (and associated works) and the impact upon traffic and parking within Central Road.

Clause 26(1) of SEPP (HSPD) states that a consent authority must not grant consent to a development unless the consent authority is satisfied, by written evidence, that residents of the development will have access to the necessary services. The required works for the construction of a footpath are located within the public road reserve which is land owned by Northern Beaches Council. In view of the above comments, the construction of a footpath to provide a suitable access pathway to the existing bus stop is not supported by several of Council's internal departments, and there is no guarantee that consent for the works in association with the footpath would be supported. Furthermore, reliance on a deferred commencement condition for consent to be obtained for the road reserve works is not supported as the works are directly associated with the permissibility of the proposed development.

The Applicant has not provided sufficient detail regarding the works in the road reserve for Council to support the construction of a footpath to facilitate suitable access to the existing bus stop. The Applicant has also failed to consider adjoining landowners who may be potentially impacted by the proposed development, noting that the road reserve works may require relocation or amendments to the existing access driveways to the properties at 63-65 and 67 Central Road, which may involve works on private property. The impacts associated with these works have not been addressed by the Applicant.

As such, Council cannot be satisfied that the proposed development can provide adequate and safe access to services and facilities, inconsistent with provisions of Clause 26 of SEPP (HSPD) and the application may be refused on these grounds.

### **BULK AND SCALE AND COMPATIBILITY WITH THE LOCALITY**

#### **Character**

- **Clause A4.1 Avalon Beach Locality of P21 DCP**
- **Clause D1.1 Character as viewed from a public place of P21 DCP**
- **Clause D1.4 Scenic protection – General of P21 DCP**

Submissions have been received which consider the proposal to be an overdevelopment of the site and the design of the development to be out of character with the existing development within the street and surrounding area. Concerns were also raised regarding the visual impact of the development, with several noting the scale and level of the elevated driveway.

A submission was also received which raised concerns regarding the three (3) storey nature of the development. The proposed development shall appear as two (2) storey from the street and public area to the rear of the site. The basement carparking shall be partially visible above ground, however this component of the development is likely to be obscured by the internal driveway. Notwithstanding the above, concern is raised regarding the apparent scale of the development as viewed from the street.



A predominant characteristic of the Avalon Beach locality is large front setbacks with established landscaping within the front yard. This is noted in clause A4.1 regarding the desired future character of the Avalon Beach locality which states:

*Most houses are set back from the street with low or no fencing and vegetation is used extensively to delineate boundary lines. Special front building line setbacks have been implemented along Avalon Parade to maintain the unique character of this street. This, coupled with the extensive street planting of canopy trees, gives the locality a leafy character that should be maintained and enhanced.*

This characteristic is adopted in Central Road, and can be seen in the existing developments on the site and the adjoining properties which provide the following front setbacks:

- 67 Central Road – minimum front building line of 15.5m
- 69 Central Road – minimum front building line of 12.8-14m
- 71 Central Road – minimum front building line of 9.1-10.75m
- 73 Central Road – minimum front building line of 8.5m

The large setbacks along Central Road primarily portray vegetated front yards with mature canopy trees.

The desired future character of Avalon Beach also requires that:

*A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors*

Furthermore,

*Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with development.*

Clause D1.1 of P21 DCP requires that the bulk and scale of development is minimised by integrating landscaping with the building design to screen the visual impact of the development, and ensure that buildings which front the street are compatible with the design themes for the locality.

The proposed development shall have a minimum front building line of 6m, with the ground floor level setback a minimum of 6m from the front boundary and the upper level setback 6.5m from the boundary. The resultant development shall be a two-storey development which spans almost 30m across the Central Road frontage. While the development provides some articulation on the northern façade through the terraces and some modulation in the external walls, there are no sufficient breaks within the building to break up the built form. Nor is there any significant setback between the ground floor and upper floor level to minimise the apparent bulk of the development, and the proposal shall result in horizontal massing of building along Central Road. Furthermore, the proposal includes lawn areas within the front setback to be allocated to the three (3) individual units on the ground floor level which shall be setback approximately 1.5m-2m from the front boundary, with no trees or planting proposed within these areas. As such the proposal does not permit any substantial canopy trees to be planted on the site to screen the development as viewed from the street, or from the properties adjacent to the development. As discussed further in the report, the proposal is considered to have an unreasonable impact upon the natural environment and wildlife corridor, with no appropriate replacement canopy planting.



It is also noted that the in relation to existing Seniors Housing developments within the street, the main bulk of the building at 63-65 is setback in excess of 6.5m (approximately 8.4m-12.8m) with two (2) protruding architectural elements of the building extending to the 6.5m building line, and the front setback of 15-17 Central Road is approximately 8.3m-12.5m.

The level and height of the proposed driveway is determined by the flood hazard of the site, which requires the entry point to be at or above the Flood Planning Level. However, the proximity of the driveway to the eastern boundary provides no opportunity for it to be adequately screened and as discussed further in the report, the location of the driveway is unsupported.

In view of the above, the proposed development is entirely inconsistent with the existing and desired character of the area.

### **Bulk and Scale**

Submissions have been received which raise concerns regarding the bulk and scale of the development, which is seen to be inconsistent with the low-density residential zoning of the area, and non-compliances with the applicable built form controls in relation to FSR, density, height, front building line and landscaped area.

#### **Height**

- **Clause 40(4) Height in zones where residential flat building are not permitted of SEPP (HSPD)**
- **Clause 50(a) Building Height of SEPP (HSPD)**
- **Clause 4.3 Height of Buildings of PLEP 2014**

Clause 40(4) of SEPP (HSPD) incorporates a development standard which stipulates that the height of all buildings in the proposed development must be 8m or less. The architectural drawings demonstrate that the proposed development shall result in a minor breach of the 8m height restriction on the eastern and southern elevation of the front northern building. Furthermore, Clause 50(a) states that a consent authority must not refuse consent to a development application if the proposed buildings are 8m or less, regardless of any other standard specified by another environmental planning instrument limiting development to two (2) storeys.

Clause 4.3 of PLEP 2014 specifies a maximum building height of 8.5m above existing ground level for the subject site. The proposed development shall have a maximum height of 8.65m above existing ground level, limited to a minor portion of the rear roof of Unit 11. It is noted that the SEE identifies that the proposed development fully complies with the maximum building height of 8.5m, however the existing ground level at the rear of Unit 11 is RL12.55 and the roof height at this portion is RL21.2, resulting in a minor non-compliance of 150mm. As such the proposed development is also technically non-compliant with the requirements of Clause 4.3.

The height of the development is considered to be excessive, with particular regards to the northern elevation which reaches a maximum height of RL22.10m. The proposed development shall be considerably higher than the adjoining developments and is considered to be out of context with the existing development along the southern side of Central Road. For comparison, the following heights are noted:

- 73 Central Road is a two (2) storey dwelling with a maximum ridge height of RL 19.18m, however the dwelling has a pitched roof and the height of the gutter line at the Central Road frontage is approximately RL 17.62m;
- 67 Central Road is a single storey dwelling with a maximum height of RL 16.89m. The dwelling has a pitched roof and subsequently the gutter line at the Central Road frontage is approximately RL14.83m;
- 63-65 Central Road (multi-unit Seniors Housing) appears as two (2) storeys as viewed from Central Road and has a maximum ridge height of RL19.72m, however this is limited to the central roof element, with the maximum ridge at the Central Road frontage RL19.27m.

Again this development has a pitched roof and as such the gutter line at the frontage is approximately RL17.87m.

In order to maintain consistency with the maximum height requirements, the subject development proposes a skillion roof with minimal pitch, with the highest point of the roof ridge on the northern elevation fronting Central Road. As such the proposal shall extend well above the surrounding developments and does not continue the transition of development within the street. It is also considered that the apparent height of the development is exacerbated by the proposed roof form.

Clause 4.6 of PLEP 2014 permits Council to consider a variation to a development standard provided the applicant has submitted a written statement requesting the variation in accordance with the requirements of Clause 4.6. No Clause 4.6 variation has been requested and without the submission of a Clause 4.6 exception statement Council has no authority to consider any variation to the numerical control. However, the proposal is seen to be inconsistent with the objectives of Clause 4.3, with particular regards to ensuring the building is consistent with the desired character of the locality, compatible with the height and scale of surrounding and nearby development, and minimising adverse visual impacts upon the natural environment.

Notwithstanding the above, it is acknowledged that the development could easily be amended to strictly comply with the numerical requirement through a minor reduction to the roof height.

#### Density

- **Clause 50(b) Density and Scale of SEPP (HSPD)**

Clause 50(b) of SEPP (HSPD) states that a consent authority must not refuse consent to a development application if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less. Council calculates that the FSR of the development to be 0.59:1. The Applicant acknowledges a non-compliance with the FSR and argues that the non-compliance is minor and that the resultant FSR *"has been appropriately distributed across the site have regard to the relationship of the proposal to the established built form arrangement on adjoining properties and the maintenance of appropriate residential amenity outcomes."*

PLEP 2014 does not provide any FSR for the proposed development, and as such the overall size and scale of the development is determined by the built form controls contained within PLEP 2014 and P21 DCP.

The total area of the subject site is 2366m<sup>2</sup>. As such a non-compliance with the FSR of 0.09:1 results in approximately 234.23m<sup>2</sup> of gross floor area above that permitted under the SEPP, which would equate to a minimum two (2) units. As such the non-compliance cannot be considered as minor. It is considered that the density directly attributes to the overall bulk and scale of the development which is considered to be excessive. It is noted that the Applicant calculates the FSR to be 0.57:1, however this non-compliance would still equate to the loss of two (2) units in order to comply with the minimum FSR stipulated. The proposed density is not supported and the consent authority can refuse the application on this basis.

#### Built Form Controls

- **Clause D1.8 Front building line of P21 DCP**
- **Clause D1.9 Side and rear building line of P21 DCP**
- **Clause D1.11 Building envelope of P21 DCP**
- **Clause D1.14 Landscaped Area - Environmentally Sensitive Land of P21 DCP**

As discussed above, the proposal results in a non-compliant front building line and is inconsistent with the building setback of the streetscape. Furthermore, the proposed development does not comply with the minimum side setbacks stipulated by P21 DCP and results in non-compliance with the prescribed building envelope. The minimum side setbacks are to be in accordance with the following formula:  $3 + ((H - 2) / 4)$ , where 'H' is height above natural ground level, and the following setbacks are required:

Northern Building

Eastern side building line – 4.6m and 4.45m;

Western side building line – 4.5m and 4.31m;

Southern Building

Eastern side building line – 4.33m and 4.325m;

Western side building line – 4.31m and 4.2m;

The subject development proposes side setbacks to the eastern and western boundary of the southern building of 3.024m and 3m, and the northern building of 8.124m and 3m.

The combination of non-compliances with the minimum setbacks and building envelope result in horizontal massing of built form. Furthermore, the proposal does not provide enough modulation on the northern façade to break up the built form, noting that the northern façade is overall a boxlike presentation. For example, the Seniors Housing development at 15-17 Central Road provides a void in the centre of the development, which allows the design to present the perception of two (2) dwellings to the street, consistent with the low-density character of the area. The resultant bulk and scale is entirely inconsistent with the surrounding developments and incompatible with the existing streetscape.

While it is acknowledged that the development complies with the landscaping requirements of SEPP (HSPD), the surrounding sites generally have a minimum landscaped area of 60% of the site, allowing for adequate landscaping to screen the development and minimise the apparent bulk and scale. As discussed previously, the development as proposed does not allow sufficient canopy landscaping to be provided on site to minimise the visual impact of the built form. As such the proposal is not supported in its current form.

- **Clause 29 - Site compatibility criteria to which clause 24 does not apply of SEPP (HSPD)**
- **Clause 32 - Design of residential development**
- **Clause 33 - Neighbourhood amenity and streetscape of SEPP (HSPD)**

Clause 29 of SEPP (HSPD) requires Council to consider the impact that the bulk, scale, built form and character of proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.

Clause 33 of SEPP (HSPD) identifies that a seniors housing development should recognise the desirable elements of the locations current character and contribute to the quality and identity of the area. The development should also provide setbacks to adequately reduce bulk and overshadowing, and adopt building heights at the street frontage that are compatible with adjacent development. A seniors housing development should also adopt a front building line that is in sympathy, but not necessarily the same as the existing building line and utilise plantings that is in sympathy with other planting in the streetscape. Major existing canopy trees should also be retained.

In *Project Venture Developments v Pittwater Council [2005] NSWLEC 191* Senior Commissioner Roseth developed a planning principle to determine whether or not a development is compatible with the surrounding urban environment. The planning principal identifies that the following two questions should be asked;

1. *Are the proposals physical impacts on surrounding development acceptable?*
2. *Is the proposals appearance in harmony with the building around it and the character of the street?*

In consideration of the physical impacts, the proposal shall have a detrimental impact upon the adjoining property to the east, with regards to noise and the visual impact of the retaining wall located adjacent to the property. However, these are in association with the driveway component of the development and as such are not considered to attribute to the overall compatibility of the



development with the surrounding urban environment. Notwithstanding the above, it is noted that relocation of the driveway could assist in breaking up the building and minimising the apparent bulk and scale, which would assist in integrating the development with the surrounding context.

With regards to the visual appearance of the development, the site is predominantly surrounded by low-density residential developments, with two (2) established Senior Housing developments on Central Road, one (1) located within the immediate vicinity and one (1) located in the eastern side of Central Road. The adjoining dwelling at 73 Central Road is two (2) storey in height and the adjoining dwelling at 67 Central Road is single storey in height. Both are surrounded by large landscaped areas and established canopy trees. Senior Commissioner Roseth notes that the most important contributor to urban character is the relationship of built form to surrounding space, created by building height, setbacks and landscaping. The principal goes on to state that *"buildings do not have to be the same height to be compatible Where there are significant differences in height, it is easier to achieve compatibility when the change is gradual rather than abrupt. The extent to which height differences are acceptable depends also on the consistency of height in the existing streetscape."* As discussed previously the height of the proposed development is considered to be excessive in comparison to the adjoining developments along the southern side of Central Road, with the proposed building protruding above the existing roof lines. Furthermore, the minimal front setback diminishes the unity of the existing streetscape, with no opportunity to provide canopy trees within the front of the site, also noting that the existing Senior Housing developments within Central Road are consistent with the existing streetscape character, by providing larger setbacks to the street.

As viewed from the street the proposed development is not considered to be in harmony with the visual appearance of the surrounding area, and the proposal is seen to fail against the test of compatibility as identified by the planning principle developed in *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*.

As discussed above, the proposed development shall also result in an unacceptable level of bulk and scale, resulting from inadequate setbacks and horizontal massing of built form. As such the proposed development is inconsistent with the principals of Clause 33 of SEPP (HSPD).

- **Clause C1.21 Seniors Housing of P21 DCP**

Clause C1.21 of P21 DCP aims to ensure that seniors housing developed in accordance with SEPP (HSPD), located outwith medium density zones, are in keeping with the development of the surrounding area with regards to character, and bulk and scale; that the development shall not result in such an accumulation of Seniors Housing to create a dominant social type in the surrounding neighbour; and not result in a dominant "residential flat building" appearance in the neighbourhood.

As discussed previously the proposal is not considered to be in keeping with the surrounding area with regards to bulk, building height, scale, and character.

It is also noted that there are several existing Senior Housing developments within the vicinity of the subject site, being approximately six (6) in-fill, self-care type developments, and a retirement village located to the south-east of the site. Furthermore, there is an existing Seniors Housing development located one site away from the subject site at 63-65 Central Road. As such concern is raised with the number of developments and the dominance of Seniors Housing within the neighbourhood, and visual impact of the accumulative developments, particularly noting that the R2 zone does not permit any medium density housing. Clause C1.21 aims to minimise the visual bulk and scale of development, by ensuring development fits in with the low-density residential character of the area, which the proposed development does not achieve. Notwithstanding the above concerns, SEPP (HSPD) permits development for the purpose of Seniors Housing on the subject site and does not stipulate any requirements with regards to the number of Seniors Housing development within an area.



### **IMPACTS UPON THE NATURAL ENVIRONMENT**

- Clause 29 - Site compatibility criteria to which clause 24 does not apply of SEPP (HSPD)
- Clause 31 – Design of in-fill self-care housing of SEPP (HSPD) (*Seniors Living Policy: Urban Design Guideline for Infill Development*)
- Clause 7.6 Biodiversity of PLEP 2014
- Clause B4.6 Wildlife Corridors of P21 DCP
- Clause C1.1 Landscaping of P21 DCP

Several submissions were received which raised concerns regarding the impact upon the natural environment, with particular regards to the site being identified as a wildlife corridor, the impact upon habitat and the level of tree removal proposed.

The proposed development requires the removal of numerous trees to facilitate the proposed development, including several trees within Council's road reserve area in relation to the proposed vehicle access. The application was referred to Council's Natural Environment Officer (Bushland and Biodiversity) for comment and/or recommendations, the following comments were provided:

*The subject site is identified as a High Priority Wildlife Corridor under the P21 DCP, and due to a significant number of locally native canopy trees, currently provides habitat connectivity between the adjoining Toongarri Reserve and nearby Stapleton Reserve. An arborist report has been submitted (Urban Forestry Australia, October 2017) and assesses sixty-one (61) trees, sixteen (16) of which are prescribed trees and four (4) of which are street trees proposed for removal to accommodate the proposed works. Three (3) of these have been identified as having high landscape significance, nine (9) as medium significance and eight (8) as low significance. A further thirteen (13) site, street and adjoining locally native trees are identified as potentially impacted and requiring targeted tree protection measures. Seven (7) non-prescribed trees are also identified for removal.*

*The following high- and medium-significance trees are proposed for removal:*

- T17 - *Eucalyptus umbra*
- 18 - *Angophora costata*
- T19 - *Syzygium paniculatum*
- T23 - *Livistona australis*
- T23A - *Livistona australis*
- T23B - *Livistona australis*
- T24 - *Araucaria heterophylla*
- T25 - *Livistona australis*
- T25A - *Macadamia integrifolia*
- T26 - *Magnolia grandiflora*
- T35 - *Angophora costata*
- T35A - *Livistona australis*

*The proposal seeks to remove a significant proportion of existing trees on the site and from adjoining properties and the road reserve, with a large proportion of these being locally native canopy trees of medium or high landscape significance. Moreover, as the proposal will require the construction of a footpath within the road reserve from the subject site to the bus stop adjacent 63-65 Central Road, the proposal will require the removal of more street trees than assessed in the submitted arborist report.*

*The submitted landscape plan provides for replacement planting with five (5) immature specimens of locally native canopy trees, with a total proportion of locally native species to be replanted of approximately 70%. The proposed replacement planting does not adequately offset the twenty-one (21) existing trees required to be removed to facilitate the development, and is therefore not supported.*

*Given the significant number of site and street trees to be removed, including locally native and exotic trees of medium to high landscape significance, it is considered that the proposal is inconsistent with the following outcomes of DCP Clause B4.6:*

- Development shall not directly impact on / or significantly reduce / degrade habitat for locally native species, threatened species, endangered populations or endangered ecological communities.*
- Development shall retain, and provide an adequate buffer to, wildlife corridors.*
- Development shall provide wildlife corridors via creation, restoration, and / or regeneration of habitat.*
- Development shall not result in a significant loss of canopy cover or a net loss in native canopy trees.*
- Development shall ensure that at least 60% of any new planting incorporates native vegetation.*
- Planting is to maximise linkage within the wildlife corridor.*

*Development on a site subject to Clause B4.6 should demonstrate that the proposal has been designed and sited to first avoid and minimise impacts to existing native vegetation, with new landscaping provisions to adequately offset any residual impacts. An amended proposal with a substantially reduced development footprint which allows for retention of a greater proportion of existing trees (particularly those of medium to high landscape significance), and supported by a landscape plan including a 3:1 ratio of replacement canopy tree planting, may be supported by Natural Environment. However, as the proposal will have a significant impact on the habitat connectivity and landscape value of the site and surrounding areas, and is inconsistent with DCP Clause B4.6, it is not supported in its current form.*

The proposed development shall have an unreasonable adverse impact upon the natural environment and as such is also inconsistent with the requirements and objectives of clause 7.6 (Biodiversity) of PLEP 2014.

Clause 31 of SEPP (HSPD) requires consideration of the provisions of *Seniors Living Policy: Urban Design Guideline for Infill Development 2004*. The application was also referred to Council's Senior Landscape Architect who provided the following comments in relation to the landscaping and natural environment considerations of *Seniors Living Policy: Urban Design Guideline for Infill Development*, and clause C1.1 Landscaping of P21 DCP:

Section 2 of SLP: Urban Design Guidelines – Site Planning and Design, which includes the retention of trees and planting on the street and in front setbacks to minimise the impact of new development on the streetscape;

Section 3 – Impacts upon streetscape, which includes minimising impacts on the existing streetscape, and ensuring that the new development, including the built form, front and side setbacks, trees and planting.

*The proposal provides no significant tree planting within the front setback to minimise the development impact to the streetscape, and instead proposes replacement street trees on Council's nature verge, which eliminates any future proposal to provide pedestrian pathway access along Central Road.*

*As such, both Section 2 and Section 3 are not satisfied by the proposal. Additionally, DCP C1.1 Landscaping controls are not met with no canopy tree planting within the front setback and softening of the built form by landscaping.*

Section 4 – Impacts upon neighbours, which includes minimising impacts on privacy and amenity, and reducing the bulk of development on neighbouring properties.

*The proposal to remove significant vegetation along the eastern boundary to 67 Central Road to allow for the carpark entry and basement results in insufficient replacement planting along the boundary to reduce the impact of the built form.*

*Along the driveway boundary, insufficient planting width is provided to support planting to a height that will reduce the impact, and thus the proposal fails to meet the requirement to improve amenity by increasing the width of landscaped areas between driveways and boundary fences to support effective planting.*

Section 5 – Internal Site Amenity, which includes providing quality useable private and communal open spaces for all residents.

*The proposal for open space areas access from units 07, 08 and 09 are not at grade and hence reduce the amenity for residents to utilise the open space.*

Council's Senior Landscape Architect also raised concerns regarding the removal of significant trees as follows:

*T18 (Sydney Red Gum) is a tree of significant value to the streetscape, and is in good condition. Its removal is primarily to support the proposal for a driveway. There are alternative driveway locations available along the roadway, namely at T43 and T44 (weeping bottlebrushes), which are tall shrubs and do not provide a tall canopy typical of Avalon.*

Council's Tree Assessment Officer also does not support the removal of T18, and his advice is provided below:

*I inspected this site on Friday 23 February with a focus primarily on the four trees suggested for removal on Council land, these are:*

17	Broad Leaved White Mahogany
17a	Cheese Tree
17b	Rough Barked Apple
18	Sydney Red Gum

*Of these 17a & 17b are not significant and could be removed regardless of the development. 17 and 18 are significant though 17 appears to be in decline, removal of the 17 could benefit 18 in the long term*

*18 is a significant specimen, if the development is considered options for retaining this tree should be explored as with appropriate management it has a medium ULE*

*I think the report describes these trees accurately, I don't support the removal of tree No 18 for the purpose of this development.*

*Overall the development appears as though it would have a significant effect on the trees in this area.*

The proposed driveway to the eastern side of the site is not supported due to its proximity to, and adverse impact upon, the adjoining neighbour, with particular regards to the visual impact of the eastern retaining wall and lack of appropriate planting to the northern side of the eastern boundary to effectively screen the development. It is considered that there are alternative options for the location of the driveway, to the central or western side of the site (as outlined by the Landscape Architect), which would allow for the retention of significant trees, provide a break in the overall built form of the development and result in a better planning outcome for the site. Furthermore, it is considered that an alternative, lesser design could permit the retention of trees on site and an acceptable impact upon the natural environment. As such the proposed development is not supported in its current form.



## **SENIORS LIVING POLICY: URBAN DESIGN GUIDELINE FOR INFILL DEVELOPMENT**

### **• Clause 31 - Design of in-fill self-care housing**

Clause 31 of SEPP HSPD requires a consent authority to have consideration of the provisions of the *Seniors Living Policy: Urban Design Guideline for Infill Development* published by the Department of Infrastructure, Planning and Natural Resources in March 2004. These urban design guidelines associate the development standards of SEPP HSPD with design principles and general rules of thumb to achieve appropriate urban design for infill development. These design principles and rules of thumb are considered in the following table;

Clause	Principle	Proposal	C
2. Site Planning and Design	General: <ul style="list-style-type: none"> <li>Site design should be driven by the need to optimise internal amenity and minimise impacts on neighbours</li> <li>Cater for the broad range of need by providing a mix of dwelling sizes</li> </ul>	<p>The applicant has failed to demonstrate that the proposal has been designed to optimise internal amenity or minimise impacts on neighbours (see clause C1.4 and C1.6 of P21 DCP).</p> <p>The proposed development does not include a mix of dwelling types, offering only 3 bedroom apartments.</p>	N
	Built Form: <ul style="list-style-type: none"> <li>Locate the bulk of development towards the front of the site to maximise the number of dwellings with a frontage to a public street</li> <li>Parts of the development towards the rear should be modest in scale to limit impacts on adjoining properties</li> <li>Design and orient dwelling to respond to environmental conditions</li> </ul>	<p>While there are six (6) dwellings located towards the front of the site, none of them are orientated towards the street, in that there is no direct access to the units from Central Road with entrances located to the south and gained via the internal circulation area.</p> <p>The rear building is of a similar scale, however does not have any basement level and is limited to two storey in nature.</p> <p>The development has been designed to maximise solar access to the front units, however concern is raised regarding solar access to the rear units which may be limited by overshadowing from the front building.</p>	N
	Trees, landscaping and deep soil zones: <ul style="list-style-type: none"> <li>Maintain existing patterns and character of gardens and trees: <ul style="list-style-type: none"> <li>Retain trees on the street and in front setbacks</li> <li>Retain trees and plantings at the rear</li> <li>Retain large or otherwise significant trees through sensitive planning</li> </ul> </li> <li>Improve amenity by increasing the proportion of the site that is landscaped area</li> <li>Provide deep soil zones for absorption of run-off and to sustain</li> </ul>	<p>The proposal shall result in the loss of several significant trees on the site and within the road reserve area. The level of tree removal is not supported by Council's Natural Environment Officer.</p> <p>The portion of the site that is landscaped is not commensurate with that of surrounding development.</p>	N



Clause	Principle	Proposal	C
	vegetation <ul style="list-style-type: none"> <li>Minimise the impact of higher site cover in stormwater run-off</li> </ul>		
	Parking, garaging and vehicular circulation: <ul style="list-style-type: none"> <li>Consider centralised parking to reduce the amount of space occupied by driveways</li> <li>Where possible, retain existing driveways and crossings</li> </ul>	The proposal is utilising the existing crossover located to the east, however the width of the access driveway will need to be increased which will require the removal of several trees within the road reserve area. While centralised parking is provided, the location of the driveway is considered to result in a poor amenity outcome for the neighbouring dwelling and an unreasonable impact upon the natural environment and is not supported.	Y
	<b>RULE OF THUMB:</b> The proportion of the site given to landscaped area and deep soil should be increased in less urban areas, on large lots, and in areas already characterised by a high proportion of open space and planting.	The proposed development results in 912.33m <sup>2</sup> of landscaped area, or 38.56% of the total site. Whilst Council must not refuse the application on this basis, the proportion of landscaped area is considerably less than nearby properties that are subject to a minimum landscaped area of 60%.	N
3. Impacts on streetscape	General: <ul style="list-style-type: none"> <li>Respond to the desired streetscape by:               <ul style="list-style-type: none"> <li>Locating and designing new development to be sympathetic to existing streetscape patterns (building siting, height, separation etc.)</li> <li>Providing a front setback that relates to adjoining development</li> </ul> </li> </ul>	As discussed with regard to the desired future character of the Avalon Beach locality, the proposal is not considered to respond to the existing and desired character of the locality.  The proposal results in a minor technical non-compliance with the minimum front building line, however is inconsistent with the front setbacks of the adjoining properties and existing developments within the street.	N
	Built form: <ul style="list-style-type: none"> <li>Reduce the visual bulk of development by;               <ul style="list-style-type: none"> <li>Breaking up the building massing and articulating facades</li> <li>Allowing breaks in rows of attached dwellings</li> <li>Using varied materials</li> <li>Using a roof pitch</li> </ul> </li> </ul>	The massing of the building has not been adequately broken down, with particular regards to the horizontal massing of the development. There are no breaks within the building form.  In order to achieve consistency with the maximum height requirements, the development proposes skillion	N

Clause	Principle	Proposal	C
	<p>sympathetic to that of existing buildings in the street</p> <ul style="list-style-type: none"> <li>○ Avoiding uninterrupted building facades including large areas of painted render</li> </ul>	roofs with a minimal pitch of 3°. The streetscape is predominantly characterised by pitched roofs and as such the proposed roof is not in sympathy to the roof form of surrounding development.	
	<p>Trees, landscaping and deep soil zones:</p> <ul style="list-style-type: none"> <li>• Retain existing trees and planting in front and rear setbacks and in the road reserve.</li> </ul>	The tree removal associated with the development is not supported, with significant tree loss within the front of the site and in the road reserve. Council's Natural Environment Officer noted that impact upon the existing natural environment could be minimised through an amended design and a lesser density of development.	N
	<p>Residential amenity:</p> <ul style="list-style-type: none"> <li>• Clearly define open space in front setbacks as either private or communal open space</li> <li>• Define the threshold between public and private space</li> <li>• Design dwellings at the front of the site to address the street</li> <li>• Provide a high transition between the public and private domains</li> </ul>	The delineation between public, common and private areas is considered sufficient.	Y
	<p>Parking, garaging and vehicular circulation:</p> <ul style="list-style-type: none"> <li>• Avoid unrelieved long, straight driveways that are visually dominant</li> <li>• Minimise the impact of driveways upon the streetscape by terminating with trees, vegetation and open space, not garages or parking</li> <li>• Where basement car parking is used minimise the impact of the entry</li> <li>• Locate or screen all parking to minimise visibility from the street</li> </ul>	The proposal includes basement parking and as such shall be screened from the public view. The car parking entry shall not be dominant in the streetscape, however concern is raised regarding the visibility of the retaining wall to the west of the driveway (which shall extend above the 1.8m high boundary fence) and the ability to adequately screen the wall, as viewed from the public domain.	N
	<p><b>RULES OF THUMB:</b></p> <ul style="list-style-type: none"> <li>• Respond to Council planning instruments that specify the character or desired character for the area</li> <li>• Where there is a consistent front building alignment, new development should not encroach on the front setback</li> <li>• Driveways or basement entries should not exceed 25% of the site frontage</li> <li>• Garage doors should be a minimum of 1m behind the prominent building line</li> </ul>	<p>The proposal has not responded to the desired character identified by P21 DCP, and is inconsistent with the built form development controls.</p> <p>The proposed development is situated forward of the building line of existing developments within the immediate vicinity and the desired front building line.</p> <p>The driveway does not exceed 25% of the site.</p>	N

Clause	Principle	Proposal	C
4. Impacts on neighbours	<p>Built form:</p> <ul style="list-style-type: none"> <li>Design the relationship between buildings and open space to be consistent with the existing patterns in the block</li> <li>Protect neighbours amenity by carefully designing the bulk and scale of new development to relate to the existing residential character</li> <li>Break down the visual bulk of the roof form</li> <li>Design second storeys to reduce overlooking of neighbouring properties</li> <li>Reduce the impact of unrelieved walls on narrow side and rear setbacks by limiting the length of walls to these setbacks</li> </ul>	<p>The bulk and scale of the proposed development is not considered to be consistent with or respond to the existing residential character of the area, with particular regards to providing generous front setback areas.</p> <p>The amenity of adjoining residential neighbours has not been protected, and is impacted as a direct result of the size and location of the proposal.</p>	N
	<p>Trees, landscaping and vegetation:</p> <ul style="list-style-type: none"> <li>Use vegetation and mature planting to provide a buffer</li> <li>Locate deep soil zones where they will provide privacy between new and existing dwellings</li> <li>Planting in side and rear setbacks can provide privacy and shade for adjacent dwellings</li> <li>For new planting, use species that are characteristic of the local area</li> </ul>	<p>The principal deep soil areas are located at the front and rear of the site where they will not assist in preventing overlooking to adjoining properties. Furthermore, the deep soil areas within the front of the site shall form lawn areas associated with the three (3) Ground Level units, and as such there is insufficient space for adequate canopy cover within the front setback area.</p> <p>Concern is raised regarding the proposed screen planting along the western side of the driveway and the ability to retain this planting given the limited space.</p>	N
	<p>Residential amenity:</p> <ul style="list-style-type: none"> <li>Protect sun access and ventilation to living areas and private open space of neighbouring properties by ensuring adequate building separation</li> <li>Design dwellings so that they do not directly overlook neighbours private open space or look into existing dwellings</li> <li>When providing new private open space minimise negative impacts on neighbours</li> <li>Where side setbacks are not large enough to provide useable private open space, use them to achieve privacy and soften the visual impact of new development by planting screen vegetation</li> </ul>	<p>Due to the orientation of the site, the proposal shall not unreasonably impact upon the adjoining properties with regards to solar access.</p> <p>Due to the implementation of privacy measures such as screens, planting and the location of windows, the proposal is unlikely to result in any unreasonable impacts upon adjoining properties with regards to visual privacy.</p> <p>The minimal setbacks proposed, particularly with regard to the western setback to the north, does not allow for plantings to be introduced to minimise the visual impact of the development.</p>	N
	Parking, garaging and vehicular	The applicant proposes	N

Clause	Principle	Proposal	C
	<p>circulation:</p> <ul style="list-style-type: none"> <li>• Provide planting and trees between driveways and side fences to screen noise and reduce visual impacts</li> <li>• Position driveways so as to be a buffer between new and existing buildings</li> </ul>	landscaping along the western side of the driveway, between the fence and retaining wall, however concern is raised with regards to the reality of the proposed planting given the minimal setback within this area, being 750mm.	
	<p><b>RULES OF THUMB:</b></p> <ul style="list-style-type: none"> <li>• Where side setbacks are less than 1.2m, a maximum of 50% of the development should be built to this alignment</li> <li>• The length of unrelieved walls along narrow side setbacks should not exceed 8m</li> <li>• Living rooms of neighbouring buildings should receive a minimum of 3 hours direct sunlight in mid-winter</li> <li>• Solar access to the private open space of neighbouring properties should not be unreasonably reduced</li> </ul>	<p>Side setbacks exceed 1.2 metres. Side walls are broken up with terrace areas and the use of different materials and finishes.</p> <p>It is considered that the proposal shall not result in any unreasonable impacts upon the adjoining properties with regards to solar access, with Living rooms and private open space receiving a minimum of 3 hours of direct sunlight in midwinter.</p>	Y
5. Internal site amenity	<p>Built form:</p> <ul style="list-style-type: none"> <li>• Design dwellings to maximise solar access to living rooms and private open spaces</li> <li>• Design dwelling entries so that they are clear and identifiable, provide a sense of address for each dwelling and are oriented to not look directly into other dwellings</li> </ul>	<p>The six (6) units located to the northern portion of the site shall gain appropriate levels of solar access, however the applicant has not demonstrated that the six (6) units located to the rear southern portion of the site shall receive 3 hours of direct sunlight to windows associated with living rooms during mid-winter.</p> <p>It is considered that dwelling entries should be clear and identifiable as viewed from within the internal Lobby area of the development.</p>	N
	<p>Parking, garaging and vehicular circulation:</p> <ul style="list-style-type: none"> <li>• Locate habitable rooms away from driveways, car parks and pedestrian pathways</li> <li>• Avoid large uninterrupted areas of hard surface</li> <li>• Screen parking from views and outlooks from dwellings</li> <li>• Reduce dominance of areas for vehicular circulations and parking</li> </ul>	The bedrooms of Unit 03, Unit 06, Unit 09 and Unit 12 are located adjacent to the driveway, with Units 06 and 12 also adjacent to the pedestrian access, however there are no windows located on the associated elevations of the Bedrooms and it is considered that a reasonable level of amenity shall be achieved.	Y
	<p>Residential amenity:</p> <ul style="list-style-type: none"> <li>• Provide distinct and separate pedestrian and vehicular circulation</li> <li>• Ensure adequate consideration is given to safety and security</li> <li>• Provide open space that is:</li> </ul>	<p>The site includes separate driveway and pathways for circulation throughout the development.</p> <p>Communal open space is located centrally within the development,</p>	N



Clause	Principle	Proposal	C
	<ul style="list-style-type: none"> <li>o Generous in proportion</li> <li>o Oriented for solar access</li> <li>o Comprises multiple areas for larger dwellings</li> <li>o Uses screening for privacy but also allows for casual surveillance</li> <li>o Provides both paved and planted areas at ground level</li> <li>o Retains existing vegetation where practical</li> <li>• Provide communal open space that: <ul style="list-style-type: none"> <li>o Is clearly accessible to all residents</li> <li>o Incorporates existing mature trees and vegetation to provide amenity for all residents</li> <li>o Includes shared facilities</li> </ul> </li> </ul>	however is limited in area. Further it does not appear to incorporate existing mature trees and vegetation, comprising two (2) planter areas located above the basement carpark. It appears that the deep soil areas with existing vegetation, located to the front and rear of the site, shall be allocated to individual units. However no draft strata subdivision plan has been provided to confirm formal areas of communal space.	
	<b>RULE OF THUMB:</b> <ul style="list-style-type: none"> <li>• Separation of 1.2m should be achieved between habitable rooms and driveways or car parks of other dwellings</li> </ul>	The proposal achieves a minimum spatial separation of 1.2m between the driveway and habitable rooms.	Y

The proposed development fails to achieve consistency with the design principles or rules of thumb guidelines identified within the *Seniors Living Policy: Urban Design Guideline for Infill Development*, resulting in inconsistency with Clause 31 of SEPP HSPD.

#### **RESIDENTIAL AMENITY**

- **Clause 32 - Design of residential development of SEPP (HSPD)**

#### **View Loss**

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

A submission was received from the adjoining property at 73 Central Road which raised concerns regarding the development impacting upon their existing leafy outlook. A site inspection revealed that there are no view corridors obtained from the adjoining property and as such there shall be no unreasonable view loss as a result of the proposed development. Notwithstanding the above, the visual impact of the development has been considered and is discussed in relation to the bulk and scale of the development.

#### **Visual Privacy**

- **Clause 34 - Visual and acoustic privacy of SEPP (HSPD)**
- **Clause C1.5 Visual Privacy of P21 DCP**

Submissions were received from the adjoining properties and those adjacent to the development which raised concerns regarding visual privacy.

Clause 34(a) of SEPP (HSPD) requires consideration of visual privacy in the location and design of windows and balconies, and the use of screening devices and landscaping. Clause C1.5 of P21 DCP requires that the living rooms and private open space of adjoining properties are protected from direct overlooking within 9m.

#### **Neighbouring properties**

Along the western elevation, the front northern units do not have any windows located on the ground floor level and have highlight windows proposed on the upper floor level. Furthermore, the rooms along this elevation are bedrooms and bathrooms. The rear southern units incorporate a privacy screen on the upper level Dining Room windows and terrace area, with the ground floor level proposing screen planting within the setback area between the building and boundary to minimise overlooking into the adjoining property to the west.

Along the eastern elevation, the front northern units do not have any windows located on the ground floor level and incorporate privacy screens on the upper floor windows. The rear southern units incorporate a privacy screen on the upper level Dining Room windows and terrace area, with the ground floor level proposing screen planting within the setback area between the building and boundary to minimise overlooking into the adjoining property to the east.

The properties adjacent to the site on the northern side of Central Road raised concerns regarding overlooking from the proposed development. The adjacent properties are all located in excess of 9m from the proposed development and as such there is sufficient spatial separation in accordance with clause C1.5. However it is considered that given the elevated nature of the properties along the northern side of the street, and removal of trees within the front of the subject site and road reserve area, there is potential for a direct line of sight between the proposed development and adjacent properties. This is discussed further below.

#### Proposed dwellings

The design of the proposed dwellings are largely consistent with the requirements of clause 34 of SEPP (HSPD) and clause C1.5 of P21 DCP, with privacy measures incorporated throughout the development to minimise the potential for overlooking. However, concern is raised with regards to the front northern units, in which the private open space is located within the front area of the site, and overlooking from the street and adjacent properties. The first floor level terraces are located a minimum of 6.5m from the front property boundary, with the ground floor level terraces located a minimum of 6m from the front property boundary. Furthermore, the lawn areas associated with Units 04, 05 and 06 are located between 1.5-2m from the front property boundary. These areas are likely to be in direct view of pedestrians within the street. While it is noted that screen planting is proposed along the northern side of these areas, as discussed in relation to the character of the area and bulk and scale of the development, the proposed landscaping within the front portion of the site is not considered to be appropriate or adequate in screening the built form. It is considered that greater spatial separation would provide a better amenity for the occupants of these dwellings, which would also allow for more appropriate landscaping to be provided within the front of the site.

#### Acoustic Privacy

- **Clause 34 - Visual and acoustic privacy of SEPP (HSPD)**
- **Clause C1.6 Acoustic Privacy of P21 DCP**

Clause 34 of SEPP (HSPD) requires consideration of acoustic privacy of neighbours by appropriate site planning, and ensuring bedrooms of new dwellings are located away from driveways and parking areas. Clause C1.6 of P21 DCP requires that noise sensitive rooms such as bedrooms as located away from noise sources, including roads and parking areas.

A submission was received from the adjoining property at 67 Central Road which raised concerns regarding the noise impacts from the proposed driveway, which is located a minimum of 1m from the common side boundary. The main bedroom is located on the western side of the adjoining dwelling, adjacent to the proposed driveway. Furthermore, the bedroom has a window on the western elevation. Given the minimal setback of 1m to the elevated driveway, the concerns are considered valid. Acoustic privacy conflicts are considered likely in this regard. Furthermore, it is considered that should the driveway be approved in the current location it is likely to dissuade or prevent the adjoining resident from opening windows, resulting in poor levels of internal amenity. Clause 34 of SEPP (HSPD) and clause C1.6 both require the consideration of neighbours in the design of development to ensure a reasonable level of acoustic amenity is maintained. The location of the proposed driveway shall result in an unreasonable impact upon the adjoining property to the east with regards to noise impacts and the proposal is not supported in this regard.

### **Solar Access**

- **Clause 35 - Solar access and design for climate of SEPP (HSPD)**
- **Clause 50(e) – Solar Access of SEPP (HSPD)**
- **Clause C1.4 Solar Access of P21 DCP**

Clause 35 of SEPP (HSPD) requires that adequate daylight is provided to the main living areas of neighbours and for adequate sunlight to areas of substantial private open space. Furthermore, Clause 50(e) states that if 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 then the application cannot be refused by Council on the basis of solar access.

Clause C1.4 of P21 DCP requires that the windows to principal living areas and the main private open space of adjoining properties and proposed dwellings shall receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.

### **Adjoining properties**

Submissions were received from the adjoining property at 67 Central Road which raised concerns regarding solar access and overshadowing from the proposed development. Given the north-south orientation of the subject site and adjoining site, it is considered that the principal living area and the private open space within the rear yard of 67 Central Road shall receive a minimum of 3 hours of direct sunlight in midwinter in accordance with the requirements of clause C1.4 of P21 DCP and the intent of clause 35 of SEPP (HSPD). The submitted shadow diagrams demonstrate that there shall not be any unreasonable impacts upon the adjoining properties with regards to solar access and a minimum of 3 hours of sunlight will be retained in midwinter.

### **Proposed dwellings**

Given the northerly orientation of the site, the units within the front building (being Units 04, 05, 06, 10, 11 and 12), located within the northern portion of the site, shall receive a minimum of 3 hours of direct sunlight to the living room and main private open space between 9am and 3pm in midwinter. However, concern is raised with the amount of direct sunlight available to the units located within the rear building (being Units 01, 02, 03, 07, 08 and 09).

The SOEE states that a minimum of 75% of the dwellings shall receive 3 hours of direct sunlight in accordance with the requirements of clause 50(e), however no evidence has been provided to demonstrate this. Concern is raised with regards to the extent of overshadowing as a result of the front building and whether enough spatial separation is provided between buildings to allow sunlight to penetrate the windows to the living areas and northern terraces. The Applicant has not provided sufficient information to determine compliance with the provisions of clause 50(e) of SEPP (HSPD) and clause C1.4 of P21 DCP. Elevational shadow diagrams would be required to demonstrate compliance with the relevant provisions.

### **Private Open Space**

- **Clause 50(f) – Private Open Space for in-fill self-care housing of SEPP (HSPD)**
- **Clause C1.7 Private Open Space of P21 DCP**

Clause C1.7 of P21 DCP requires a minimum area of private open space of 15% of the floorspace of the dwelling, with no dimension less than 2.5 metres. For ground floor units the control specifies 30m<sup>2</sup> with no dimension less than 4 metres.

Unit	Minimum Area Required	Proposed	Compliance
1	30.0m <sup>2</sup>	31m <sup>2</sup>	YES
2	30.0m <sup>2</sup>	31.82m <sup>2</sup>	YES
3	30.0m <sup>2</sup>	38.4m <sup>2</sup>	YES
4	30.0m <sup>2</sup>	51.95m <sup>2</sup>	YES
5	30.0m <sup>2</sup>	44.15m <sup>2</sup>	YES
6	30.0m <sup>2</sup>	47.23m <sup>2</sup>	YES
7	16.32m <sup>2</sup>	13.71m <sup>2</sup>	NO
8	15.48m <sup>2</sup>	19.56m <sup>2</sup>	YES



9	15.24m <sup>2</sup>	14.72m <sup>2</sup>	NO
10	14.77m <sup>2</sup>	16.26m <sup>2</sup>	YES
11	15.12m <sup>2</sup>	15.99m <sup>2</sup>	YES
12	15.34m <sup>2</sup>	15.58m <sup>2</sup>	YES

The architectural drawings demonstrate that the proposal is inconsistent with the technical requirements of clause C1.7 with regards to Units 07 and 09. Furthermore, some of the areas have dimensions less than 2.5m and 4m respectively. However, it is considered that each dwelling provides a usable and well-located area of private open space that is integrated and accessible from the living areas of the dwellings, noting that proposed areas would permit the placement of a table and chairs. It is considered that units located at the front northern portion of the site shall receive sufficient solar access. With regards to the units located to the rear of the site, on the ground floor level the private open space is primarily located to the southern side of the dwellings and as such would receive limited solar access. However, these units also include private spaces on the northern side of the dwelling. The upper level units all provide terrace areas on the northern side of the dwelling. However, the applicant has not sufficiently demonstrated that the rear units can achieve a reasonable level of solar access on the northern elevation, which may be overshadowed due to the proposed units within the front northern portion of the site. Should it be demonstrated that solar access to these northern areas is achievable, the proposal would be seen to be consistent with the outcomes of clause C1.7 and the non-compliance supported.

Notwithstanding the above, the application was lodged pursuant to SEPP (HSPD). Clause 50(f) of SEPP (HSPD) specifies that an application must not be refused based on the provision of private open space if an area of 15m<sup>2</sup> is provided to ground floor units and 10m<sup>2</sup> is provided to upper floor units. The proposed development meets the requirements prescribed by SEPP (HSPD) with regards to area and dimensions and as such application must not be refused based on non-compliance with this P21 DCP control.

## **TRAFFIC AND PARKING**

A number of submissions were received which raised concerns regarding impacts upon traffic as a result of the proposed development, including the loss of any on-street parking. One submission also raised concerns regarding the number of visitor parking spaces.

### **Off-Street Parking**

- **Clause 50(h) Parking of SEPP (HSPD)**
- **Clause B6.3 Off-Street Vehicle Parking Requirements of P21 DCP**

SEPP (HSPD) states that the consent authority must not refuse development consent on the provision of off-street parking provided that at least 0.5 spaces per proposed bedroom per dwelling are provided. Furthermore, Clause 5 of Schedule 3 of SEPP HSPD identifies that car parking spaces must comply with the requirements for parking for persons with a disability set out in AS 2890, and 5% of the total number of car parking spaces (or at least one space if there are fewer than 20 spaces) must be designed to enable the width of the spaces to be increased to 3.8 metres.

Thirty-six (36) bedrooms are proposed, being twelve (12) x three (3) bedroom units, equating to a need for eighteen (18) car spaces. The proposal provides twenty-four (24) allocated residential parking spaces and two (2) visitor spaces, which exceeds the minimum amount stipulated by clause 50(h)(i).

Clause B6.3 of P21 DCP does not specify a parking rate for Seniors Housing development. For unspecified development, the control defers to the RMS document *Guide to Traffic Generating Development*. This document, at section 5.4.4 states that for resident-funded self-contained units, the following rates are applied:

- 2 spaces per 3 units (residents); plus
- 1 space per 5 units (visitors)



For the subject development this would equate to a need for eight (8) resident car spaces and three (3) visitor spaces. While it is noted that the proposal only provides for two (2) visitor spaces, the overall car parking proposed significantly exceeds the RMS requirements and it is considered that the proposal is consistent with the parking requirements of clause B6.3 of P21 DCP.

The application was supported by an Accessibility report which confirms that all enclosed garages provide one (1) space at 3.8m wide.

In view of the above, the proposed development is considered to comply with the provisions of SEPP (HSPD) and P21 DCP, and in accordance with clause 50(h) of SEPP (HSPD), the consent authority must not refuse development consent on the provision of parking.

### **Traffic Congestion**

- **Clause B6.7 Transport and Traffic Management of P21 DCP**

Numerous concerns were raised with regards to the impact of the proposed development on traffic congestion, with several submissions noting that Central Road is currently congested and that the proposed development would worsen this.

The application was referred to Council's Transport Network Department and Traffic Engineer for comment and/or recommendations. Council's Traffic department raised several concerns regarding the proposed development and the following advice was provided:

- *Whilst the internal parking and circulation comply with the SEPP, DCP, and LEP requirements the proposed development will add to the congestion in Central Road.*
- *The Central Road carriageway is narrow and does not support legal on-street parking along both Kerb lines.*
- *The proposed development would need to provide an accessible path of travel to the existing bus facilities that provide a safe means to access the bus near 61 Central Road and this would require removal of the existing kerb and replacement with Barrier/Standard kerb to prevent vehicle parking on the footpath.*
- *Substantial On-street parking would need to be removed to allow safe access by vehicles and allow for the line of sight for turning movements.*
- *Council has received numerous complaints and requests to remove parking in this location to support provision of bus services on the 192 loop due to the width of the carriageway.*
- *The proposal is not supported in its current form as there has been no assessment provided of the impact of the required civil works on the surrounding infrastructure.*
- *If this development was to be approved there would need to be additional improvements to the road network, footpath network (not just linked to the bus stop but also to the local services within Avalon village), additional traffic facilities to support this development, and the impact to the local community in terms of parking removal along Central Road. Also additional works within the road reserve may require adjustment of numerous vehicle crossings along the southern kerb to provide a safe path of travel to Barrenjoey Road.*

The required works within the road reserve area have been discussed within in the assessment report. In view of the comments provided by Council's Transport Network department, the proposed development cannot be supported in its current form.

### **Construction Management**

- **Clause B8.6 Construction and Demolition - Traffic Management Plan of P21 DCP**

Concerns were also raised in submissions with regards to the construction and traffic management of the development, should the application be approved.

It was noted while undertaking several site visits to the subject site, that cars are often illegally parked on the road verge outside the site. It is also acknowledged that Central Road is problematic in that when cars are parked on both the northern and southern side of the road, vehicle access is

severely restricted. Should the application be approved, it is considered that there is a potential that the construction of the development, involving delivery trucks and numerous construction workers, may impact upon the flow of traffic along Central Road, with particular regards to bus movements and manoeuvring. As such, should the application be supported, it is recommended that a condition of consent be imposed for the submission of a Construction Traffic Management Plan (CTMP) (to Council's satisfaction) prior to the issue of a Construction Certificate. The CTMP should be prepared by a suitably qualified traffic consultant and should include details with regards to the following:

- Detail concerning delivery and removal of all materials
- Proposed traffic routes, noting that 3 tonne load limits apply to some roads within the Northern Beaches Council Local Government Area
- Location and extent of on/off site parking for construction workers during the construction period.
- The details of any proposed on street parking changes/ future work zone applications (subject to additional approvals).
- Proposed hours of operation.

- **Clause 7.1 Acid Sulfate Soils of PLEP 2014**

The subject site is classified as being Class 4 and Class 5 as shown on the Acid Sulfate Soils Map, with the front northern portion of the site being Class 5 and the rear southern portion of the site being Class 5. As the proposal includes a basement car park works more than 2m below the natural ground surface are required. In accordance with clause 7.1, a preliminary assessment of the proposed works is required to determine whether an Acid Sulfate Soils Management Plan is required to be undertaken. Should the application be supported, Council's Environmental Health Officer has recommended a condition of consent for an assessment to be undertaken prior to the issue of a Construction Certificate.

- **Clause 7.3 Flood Planning of PLEP 2014**
- **Clause B3.11 Flood Prone Land of P21 DCP**

The subject site is identified as being flood prone land, with a classification of High, Medium and Low flooding risk throughout the site.

Submissions were received which raised concerns regarding the flood hazard of the site. The application was referred to Council's Specialist Floodplain Engineer who advised that the proposed development generally complies with clauses B3.11, B3.12 and B3.13 of P21 DCP, and as such is also consistent with the requirements of clause 7.3 of PLEP 2014. The proposal is supported by Council's Flood department subject to recommended conditions of consent.

- **Clause C1.15 Storage Facilities of P21 DCP**

Clause C1.15 requires a lockable storage area a minimum of 8m<sup>3</sup> to be provided per dwelling, which can form part of any carport or garage area. The architectural drawings identify that ten (10) storage areas are provided within the car park. As no draft strata subdivision plan has been provided with the application it is unclear what residential units the storage areas are allocated to. The proposal fails to provide a minimum of twelve (12) storage areas for the proposed dwellings and is technically non-compliant with the control. Although the non-compliance does not warrant refusal of the application, this should be taken into consideration by the Applicant.

- **Clause B5.10 Stormwater Discharge into Public Drainage System of P21 DCP**

Clause B5.10 requires stormwater drainage to be connected to a public drainage system where possible. The subject site adjoins Toongari Reserve to the south and the proposed development seeks to connect the proposed stormwater system to the existing Council stormwater pipe located within the reserve. As such an easement would need to be created to drain water over the Council reserve. The application was referred to Council's Property Commercial & Tourist Assets department and Park Assets – Planning Design & Delivery for comment and/or recommendations.

Both departments advised that the proposed stormwater management and creation of an easement was supported. However, the following should be noted:

A separate application would need to be made to Council for an easement to drain water over Council's reserve. The application may require referral to the Minister for Local Government for determination pursuant to section 47 of the Local Government Act, and as such Council cannot provide any guarantee that the easement will be granted.

The applicant for an easement over Council land is required to accept all associated costs as well as pay compensation for the easement.

Council's Development Engineer raised no further concerns regarding the proposed stormwater management of the development.

## **11.0 CONCLUSION**

The Development Application has been assessed in accordance with the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979, SEPP HSPD, SEPP (BASIX), Pittwater Local Environmental Plan 2014, Pittwater 21 DCP and other relevant Council policies.

Council contends that the proposed development is not permissible pursuant to SEPP (HSPD) as the land is appropriately identified as environmentally sensitive land.

Notwithstanding the permissibility of the development, there are significant issues relating to the design of the development. Whilst it is appreciated that SEPP (HSPD) provides for a greater density and type of housing than that anticipated by PLEP 2014, consideration of the desired future character of the locality is still required and essential to the suitability of seniors housing development within a low-density residential area. The density of the development is beyond that anticipated for the site under SEPP (HSPD) and PLEP 2014. Combined with several non-compliances with Council's built form planning controls, and inadequate landscaping, the proposal shall result in an unacceptable level of bulk and scale, and is found to be incompatible with the surrounding development, including other Senior Housing developments within the street. Furthermore, the proposed development shall result in an unacceptable impact upon the existing natural environment, with particular regards to level of significant trees to be removed and/or impacted upon. An amended lesser design would allow for the retention of existing canopy trees on site. A key issue which has been overlooked by the Applicant is the provision of access to services and facilities in accordance with Clause 26 and the impacts of the implementation of a footpath to accommodate this. Further consideration of the access requirements from the site to the existing bus stop are required with regards to impacts upon trees and traffic. The areas of concern identified throughout this report are such that a redesign of the development would be required, rather than carrying out of minor adjustments.

In light of these unresolved issues and the permissibility of the development, the application is ultimately recommended for refusal.

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**RECOMMENDATION OF DEVELOPMENT OFFICER / PLANNER**

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 refuse Development Application N0512/17 for Demolition of existing dwellings and construction of a 12-unit Seniors Living development with basement parking, landscaping and strata subdivision of the resultant development at 69 and 71 Central Road, Avalon for the reasons outlined in the draft refusal notice attached.

Report prepared by

Angela Manahan  
**PRINCIPAL PLANNER**



**DRAFT DETERMINATION**

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**REFUSAL****ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 (AS AMENDED)  
NOTICE TO APPLICANT OF DETERMINATION OF A DEVELOPMENT APPLICATION**

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Applicant's Name and Address:

**R. WHITTAKER  
C/- GARTNER TROVATO ARCHITECTS  
PO BOX 1122,  
MONA VALE NSW 2103**

Being the applicant in respect of Development Application No **N0512/17**

Pursuant to section 4.16 of the Act, notice is hereby given of the determination by Northern Beaches Council, as the consent authority, of the Development Application **N0512/17** for:

***Demolition of existing dwellings and construction of a 12-unit Seniors Living development with basement parking, landscaping and strata subdivision***

**At: 69 and 71 Central Road, Avalon Beach (Lot 15 and 16 DP 8698)**

**Decision:**

The Development Application has been refused for the following reasons:

1. The land is identified as "environmentally sensitive land" pursuant to Schedule 1 of SEPP (HSPD). As such SEPP (HSPD) does not apply to the land and the proposed development is prohibited development pursuant to the Land Use Table in Part 2 of PLEP 2014.
2. The applicant has not provided sufficient information regarding the works required within the road reserve, in relation to the construction of a footpath, and the associated impacts. Furthermore, the applicant has failed to provide satisfactory written evidence that these works would be supported by Northern Beaches Council, being the relevant land owner. As such the application fails to meet the provisions of Clause 26 (location and access to facilities) of SEPP (HSPD).
3. The application has not provided sufficient information with regards to the works within the road reserve area to demonstrate that the proposed development shall not result in an adverse impact upon impact upon traffic and on-street parking.
4. The proposed development is of an excessive height and is incompatible with the surrounding developments, resulting in non-compliance with the requirements of clause 4.3 of PLEP 2014 and the building height development standards prescribed by Clause 40(4) of SEPP (HSPD). Furthermore, the application was not supported by a clause 4.6 written statement of SEPP No.1 Objection in regards to the variation of the building height development standards of SEPP (HSPD) and PLEP 2014.
5. The proposed development shall result in an excessive level of bulk and scale on the site and is inconsistent with the existing and desired character of the Avalon Beach locality. The design of the proposal is non-compliant with every built form control prescribed by PLEP 2014 and P21 DCP, including non-compliances with height, front building line, side building line, building envelope and landscaped area. Furthermore, the proposed density exceeds that what would be reasonably anticipated by both PLEP and SEPP (HSPD). As such the development conflicts with clause 29, 30, 50(a) and 50(b) of SEPP (HSPD), with clause 4.3 of PLEP 2014, and clause A4.1, D1.1, D1.4, D1.8, D1.9, D1.11 and D1.14 of P21 DCP.
6. The proposal shall result in an unreasonable impact upon the existing canopy trees (on the site and within the road reserve area), upon the natural environment and wildlife corridors. Furthermore, the proposal fails to provide adequate landscaping and planting to compensate for the tree removal and effectively screen the built form. As such the

- development conflicts with clause 29 and 31 of SEPP (HSPD), with clause 2, 3, and 4 of the Seniors Living Policy: Urban Design Guideline for Infill Development, and is technically non-compliant with clause 7.6 of PLEP 2014, and clause B4.6 and C1.1 of P21 DCP.
7. The application fails to demonstrate that an adequate level of solar access is achieved to the six (6) units located to the south. As such, the development conflicts with provisions of clause 34 of SEPP (HSPD), with clause 4 of the Seniors Living Policy: Urban Design Guideline for Infill Development and with clause C1.4 of P21 DCP.
  8. The application fails to provide an adequate level of visual privacy to the private open space of the six (6) units located to the north, which front the street. As such, the development conflicts with the provisions of clause 34 of SEPP (HSPD), with clause 4 of the Seniors Living Policy: Urban Design Guideline for Infill Development and with clause C1.5 of P21 DCP.
  9. The proposed development shall result in an unreasonable impact upon the adjoining property to the east with regards to acoustic privacy and visual impact, as a result of the proposed driveway. As such, the development conflicts with the provisions of clause 34 of SEPP (HSPD), with clause 5 of the Seniors Living Policy: Urban Design Guideline for Infill Development and with clause C1.6 of P21 DCP.
  10. The proposal fails against a number of design guidelines and rules of thumb relating to site planning and design, impacts on streetscape, impacts on neighbours and internal site amenity. Non-compliance with the provisions of this policy is seen to result in a development that is incompatible with the locality, and an unsuitable design response, resulting in non-compliance with Clauses 29 and 31 of SEPP (HSPD).

**Notes:**

1. This determination was taken under delegated authority on behalf of the elected Council pursuant to Section 377 of the Local Government Act 1993.
2. Section 8.7 and 8.10 of the Act confers on the applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land & Environment Court exercisable within 6 months after receipt of this notice.
3. Any person who contravenes this notice of determination of the abovementioned development application shall be guilty of a breach of the Environmental Planning & Assessment Act, 1979, and shall be liable to a monetary penalty and for a restraining order which may be imposed by the Land and Environment Court.

**Signed**     On behalf of the Consent Authority

\_\_\_\_\_  
Name:

Date:     TBA



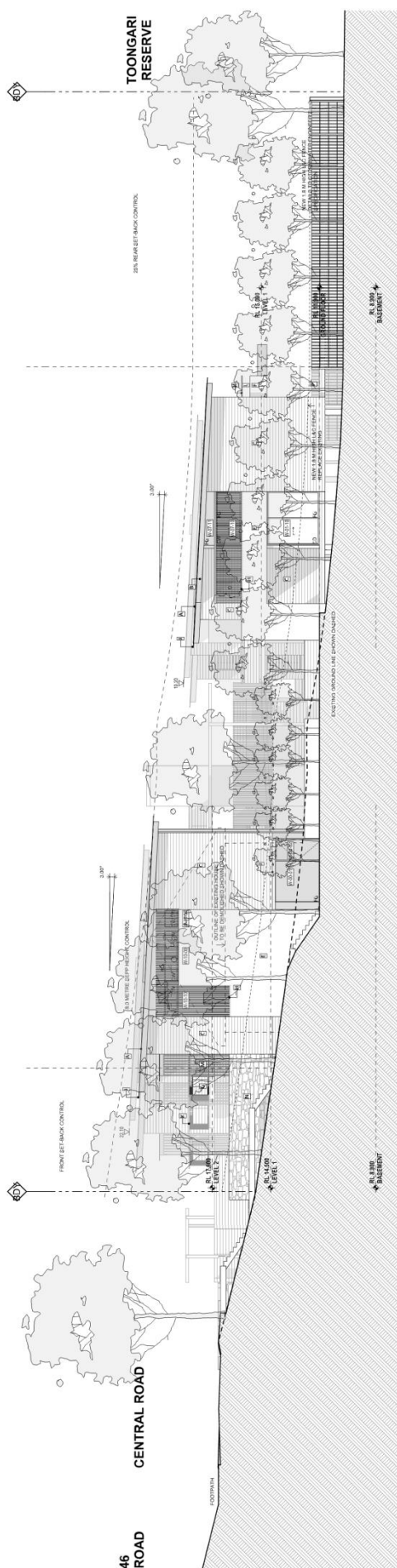


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**SOUTH ELEVATION**



WEST ELEVATION

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