

# 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 20 JUNE 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
Robert Hussey	Town Planner
John Simmonds	Community Representative

**Quorum**

A quorum is three Panel members

**Conflict of Interest**

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

**Agenda for a Meeting of the Northern Beaches Local Planning Panel  
to be held on Wednesday 20 June 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>4</b>
2.1	Minutes of Northern Beaches Local Planning Panel held 6 June 2018	
<b>3.0</b>	<b>NORTHERN BEACHES LOCAL PLANNING PANEL REPORTS.....</b>	<b>5</b>
3.1	Mod2018/0121 - 22 Tramore Place, Killarney Heights - Modification of Development Consent DA2016/0645 granted for Construction of a child care centre with basement carpark and signage.....	5
3.2	DA2018/0395 - 42-46 Government Road, Beacon Hill - Upgrade and extensions to an existing telecommunications facility (mobile phone base station).....	24
3.3	Mod2018/0180 - 77 Bower Street, Manly - Modification of Development Consent DA269/2015 granted for construction of a dwelling house.....	57
3.4	DA2017/1063 - 876 Pittwater Road, Dee Why - Demolition works and construction of a shop top housing development .....	84
3.5	DA2017/1294 - 9-15 Lawrence Street, Freshwater - Demolition works and the construction of a shop top housing development .....	163
<b>4.0</b>	<b>REVIEW OF DETERMINATIONS</b>	
	Nil	
<b>5.0</b>	<b>PLANNING PROPOSALS.....</b>	<b>247</b>
5.1	Planning Proposal - Response to Low Rise Medium Density Code .....	247
<b>6.0</b>	<b>CATEGORY 3 APPLICATIONS</b>	
	Nil	

## **2.0 MINUTES OF PREVIOUS MEETING**

### **2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 6 JUNE 2018**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 6 June 2018 were adopted by the Chairperson and have been posted on Council's website.

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### 3.0 DEVELOPMENT APPLICATIONS

**ITEM 3.1**                                      **MOD2018/0121 - 22 TRAMORE PLACE, KILLARNEY HEIGHTS -  
MODIFICATION OF DEVELOPMENT CONSENT DA2016/0645  
GRANTED FOR CONSTRUCTION OF A CHILD CARE CENTRE  
WITH BASEMENT CARPARK AND SIGNAGE**

**REPORTING OFFICER**                      **STEVE FINDLAY**

**TRIM FILE REF**                              **2018/353054**

**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 a modification of a determination or decision made by a local planning panel.

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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. Mod2018/0121 for modification of development consent DA2016/0645 granted for Construction of a child care centre with basement carpark and signage at Lot 2 DP 1216924, 22 Tramore Place, Killarney Heights subject to the conditions and for the reasons set out in the Assessment Report.

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## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0121
Responsible Officer:	Daniel Milliken
Land to be developed (Address):	Lot 2 DP 1216924, 22 Tramore Place KILLARNEY HEIGHTS NSW 2087
Proposed Development:	Modification of Development Consent DA2016/0645 granted for Construction of a child care centre with basement carpark and signage
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Local Planning Panel
Land and Environment Court Action:	No
Owner:	Mark Anthony Lawrence Susan Vivienne Lawrence The Trust Company Limited
Applicant:	Mammoth Projects
Application lodged:	15/03/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	30/03/2018 to 18/04/2018
Advertised:	31/03/2018
Submissions Received:	0
Recommendation:	Approval

### ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant



- Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## **SUMMARY OF ASSESSMENT ISSUES**

Assessment - SEPP Educational Establishments and Child Care Facilities 2017  
Warringah Development Control Plan - B5 Side Boundary Setbacks  
Warringah Development Control Plan - B7 Front Boundary Setbacks

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 2 DP 1216924 , 22 Tramore Place KILLARNEY HEIGHTS NSW 2087
<b>Detailed Site Description:</b>	<p>The subject site is generally rectangular in shape, has a surveyed area of 1308m<sup>2</sup> and has double street frontage to Tralee Avenue (primary frontage) and Tramore Place (secondary frontage).</p> <p>A childcare centre, that is currently under construction, occupies the site. Vehicular access is obtained from Tramore Place.</p> <p>A public reserve adjoins the subject site to the east. Residential development, comprising one and two storey dwelling houses in landscape settings, adjoins the eastern side of the reserve, the western side of the subject site and the southern side of Tralee Avenue.</p> <p>Further west, Killarney swim centre and Killarney Heights Primary School is located. Killarney shopping centre is located to the north of the site.</p> <p>The site is zoned R2 - Low Density Residential under Warringah Local Environmental Plan 2011 (WLEP 2011), identified as being Land Slip Risk Map - Area A and located within 50m of a heritage item (Killarney shopping centre).</p> <p>The site is not bush fire prone land.</p>

Map:





#### **SITE HISTORY**

DA2016/0645 for the construction of a child care centre, basement carpark and signage was approved by the Northern Beaches Development Assessment Panel on 14 December 2016, subject to a deferred commencement condition. This condition was satisfied and an operational consent was issued on 12 January 2017.

Construction of the child care centre (including the modified elements) is close to completion.

#### **PROPOSED DEVELOPMENT IN DETAIL**

The modifications to the approved childcare centre include:

- Substituting the masonry driveway wall with a palisade fence on the northern portion of the eastern boundary facing the public reserve.
- Adding a window drencher shut off valve on the Tralee Ave boundary.
- Substituting the blockwork fence facing Tralee Avenue and the Public Reserve with a palisade fence with acoustic Perspex and timber sleepers.
- Adding a Colorbond fence along the western residential boundary.
- Adding two windows above the driveway entry on the northern elevation.
- Confirming the type of finish used to clad the fire egress stairs on the first floor balcony (James Hardie weatherboard).
- Deletion of the basement carpark ventilation duct and louvres.
- The addition of a roof cowl.
- The relocation of several stormwater pits within the basement.
- The relocation of the disables car space within the basement.
- Minor internal alterations to the lobby, stairs, bike store and bin store within the basement.
- Minor internal alterations to the ground floor layout.

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



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

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

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2016/0645, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
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	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2016/0645.
(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	Development Application DA2016/0645 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environmental Plan 2011 and Warringah Development Control Plan.
(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	





Section 4.55 (2) - Other Modifications	Comments
control plan under section 72 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 any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

#### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p>



Section 4.15 'Matters for Consideration'	Comments
	<p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Public Exhibition" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition of the application Council received no submissions.

#### MEDIATION

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

#### REFERRALS



Internal Referral Body	Comments																					
Building Assessment - Fire and Disability upgrades	No objections subject to conditions to ensure compliance with the Building Code of Australia.																					
Environmental Health (Industrial)	<p>No objections, subject to several new conditions around noise.</p> <p><b>Planners comment:</b></p> <p>The consent already includes a condition limiting noise and the noise report is already referenced in condition 2. As such, the recommended conditions are not considered necessary.</p>																					
Landscape Officer	No objections to the proposed modification.																					
Parks, reserves, beaches, foreshore	No objections and no conditions recommended.																					
Strategic & Place Planning (Heritage Officer)	<table><tr><th colspan="3">HERITAGE COMMENTS</th></tr><tr><th colspan="3">Discussion of reason for referral</th></tr><tr><td colspan="3"><p>The subject site is located within a Heritage Conservation Area listed in Schedule 5 of Warringah Local Environmental Plan (WLEP) 2011, being <b>Item C8 - Killarney Heights Village Centre</b>. The subject site is located on the southern edge of this conservation area at No 22 Tralee Avenue, Killarney Heights.</p></td></tr><tr><th colspan="3">Details of heritage items affected</th></tr><tr><td colspan="3"><p>Details of the Heritage Conservation Area, as contained within the Warringah Heritage Inventory are:</p><p><b>Item C8 – Killarney Heights Village Centre</b></p><p><b>Statement of Significance</b></p><p>The Killarney Heights Village Centre is of historical significance at a local level as a mostly intact, representative example of a planned commercial and community precinct servicing the 1960's 'garden suburb' of Killarney Heights. The Centre is also of social significance at a local level as its general character and function is considered to be crucial to the identity of the Killarney Heights community.</p><p><b>Physical Description</b></p><p>A planned village centre facing a small park. A substantial parking area with islands of native trees provides the forecourt to the centre. The single and two-storey commercial buildings are typical 1960s design and make extensive use of concrete block walls, aluminium framed curtain walls and shop windows.</p></td></tr><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>Sydney Regional Environmental Plan (Sydney Harbour</td><td>No</td><td>Comment if applicable</td></tr></table>	HERITAGE COMMENTS			Discussion of reason for referral			<p>The subject site is located within a Heritage Conservation Area listed in Schedule 5 of Warringah Local Environmental Plan (WLEP) 2011, being <b>Item C8 - Killarney Heights Village Centre</b>. The subject site is located on the southern edge of this conservation area at No 22 Tralee Avenue, Killarney Heights.</p>			Details of heritage items affected			<p>Details of the Heritage Conservation Area, as contained within the Warringah Heritage Inventory are:</p> <p><b>Item C8 – Killarney Heights Village Centre</b></p> <p><b>Statement of Significance</b></p> <p>The Killarney Heights Village Centre is of historical significance at a local level as a mostly intact, representative example of a planned commercial and community precinct servicing the 1960's 'garden suburb' of Killarney Heights. The Centre is also of social significance at a local level as its general character and function is considered to be crucial to the identity of the Killarney Heights community.</p> <p><b>Physical Description</b></p> <p>A planned village centre facing a small park. A substantial parking area with islands of native trees provides the forecourt to the centre. The single and two-storey commercial buildings are typical 1960s design and make extensive use of concrete block walls, aluminium framed curtain walls and shop windows.</p>			Other relevant heritage listings			Sydney Regional Environmental Plan (Sydney Harbour	No	Comment if applicable
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Other relevant heritage listings																						
Sydney Regional Environmental Plan (Sydney Harbour	No	Comment if applicable																				





Internal Referral Body	Comments		
	Catchment) 2005.		
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
<p>This application proposed some external modifications to the already approved child care centre (approved by DA2016/0645). These changes relate to minor design changes, however the essential form, scale and use of the building has not changed from the original proposal approved by DA2016/0645.</p> <p><b>Therefore, no objection is raised on heritage grounds and no conditions required.</b></p> <p><u>Consider against the provisions of CL5.10 of WLEP.</u> Is a Conservation Management Plan (CMP) Required? - No Has a CMP been provided? - N/A Is a Heritage Impact Statement required? - No Has a Heritage Impact Statement been provided? - N/A</p>			
External Referral Body	Comments		
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.		

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

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

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

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

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



**(SREPs)**

**SEPP 55 - Remediation of Land**

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

**SEPP (Educational Establishments and Child Care Facilities) 2017**

Clause 23 of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 stipulates that:

Before determining a development application for development for the purposes of a centre-based child-care facility, the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline, in relation to the proposed development.

The centre based child care facility was approved prior to this SEPP coming into force.

This modification involves mainly cosmetic changes that do not impact on the operation of the centre, the internal or external spaces for children, the total landscaping on the site or the amenity of the neighbouring properties.

In this regard, a full assessment of the original proposal and the modifications that are the subject of this application, under this SEPP, are unnecessary.

**Warringah Local Environmental Plan 2011**

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

**Principal Development Standards**

Development Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	8.5m	8.0m	8.0m	Yes (no change)

**Compliance Assessment**

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

**Warringah Development Control Plan**



#### Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	6.6m	6.6m	Yes
B3 Side Boundary Envelope	West - 4m	Within envelope	No change	Yes
	East - 4m	Outside envelope	No change	No change
B5 Side Boundary Setbacks	West - 0.9m	Basement level: 0.9m to 1.5m Ground floor level: 0.975m to 1.5m First floor level: 3.1m to 2.6m	Basement level: 0.9m to 1.5m Ground floor level: 0.975m to 1.5m First floor level: 3.1m to 2.6m Side fencing: 0.05m	Yes Yes Yes No
	East - 0.9m	Basement level: 0.9m Ground floor level: 0.9m First floor level: 2.7m	Basement level: 0.9m Ground floor level: 0.9m First floor level: 2.7m Side fencing: 0.92m Driveway wall and fence: Nil to 1.9m	Yes Yes Yes Yes No
B7 Front Boundary Setbacks (Tralee Avenue)	6.5m	Basement: 8.335m to 8.680m Ground floor level: 13m (osd tank) to 14.8m (playground deck) First floor level: 13m to 13.6m	Basement: 8.335m to 8.680m Ground floor level: 13m (osd tank) to 14.8m (playground deck) First floor level: 13m to 13.6m Front fencing: 0.2m	Yes Yes Yes No
	3.5m	Basement: 6.0m Ground floor level: 5.3m (entry) to 6.5m (building) First floor level: 6.5m to 9.7m	Basement: 6.0m Ground floor level: 5.3m (entry) to 6.5m (building) First floor level: 6.5m to 9.7m Driveway wall: Nil	Yes Yes Yes No
D1 Landscaped Open Space and Bushland Setting	40%	LOS: 9.3% (122m <sup>2</sup> ) Soft Landscaped areas: 16% (209m <sup>2</sup> ) Soft Landscaped Area including playground area: 33.3% (435m <sup>2</sup> )	LOS: 9.3% (122m <sup>2</sup> ) Soft Landscaped areas: 16% (209m <sup>2</sup> ) Soft Landscaped Area including playground area: 33.3% (435m <sup>2</sup> )	No change

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes





Clause	Compliance with Requirements	Consistency Aims/Objectives
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

#### **B5 Side Boundary Setbacks**

##### Description of non-compliance

The fence on the western side of the site is proposed to be just inside the boundary with a setback of approximately 50mm.

The fence along the driveway on the eastern side of the site is proposed with side setbacks of between nil and 1.9m.



The control requires a minimum of 900mm for structures that do not sit on the boundary acting as boundary fences.

While these proposed fences do not sit on the boundary, they do act as boundary fences, but still require an assessment against the objectives of this control.

#### Merit consideration

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

- *To provide opportunities for deep soil landscape areas.*
- *To ensure that development does not become visually dominant.*
- *To ensure that the scale and bulk of buildings is minimised.*
- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*
- *To provide reasonable sharing of views to and from public and private properties.*

#### Comment:

The fence on the western side of the site will serve the purpose of a side boundary fence but will sit just inside the boundary. This will provide some separation from the adjacent recently subdivided lot (which will be used for residential purposes in the future).

The palisade fence along the driveway from the basement exit will replace the current approved masonry driveway wall. The applicant states that this change will improve the visibility of cars and pedestrians around the driveway and footpaths, particularly with high pedestrian traffic during school times.

Both of these changes to fencing will not reduce the landscaping on the site and will not be any more visually dominant than a standard boundary fence. The structure will provide some additional protection for the childcare centre while still allowing visibility to the street.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **B7 Front Boundary Setbacks**

##### Description of non-compliance

The fence along the Tralee Avenue boundary is proposed with a setback of between 900mm and 200mm.

The fence along the driveway on the eastern side of the site is proposed with a nil setback to the front boundary.



The control requires a minimum of 6.5m.

Merit consideration:

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

- *To create a sense of openness.*
- *To maintain the visual continuity and pattern of buildings and landscape elements.*
- *To protect and enhance the visual quality of streetscapes and public spaces.*
- *To achieve reasonable view sharing.*

Comment:

The fence along the Tralee Avenue boundary will serve the purpose of a front boundary fence. The modifications to the location of the fence will preserve a large established tree. The fence design will be compatible with the existing streetscape.

The fence along the driveway on the eastern side of the site assists in retaining land to allow access to the basement car park. The modifications to this fence will improve the visibility of cars and pedestrians around the driveway and footpaths, particularly with high pedestrian traffic during school times. This fence will not reduce the landscaping on the site and will not result in an unreasonable visual impact to the streetscape.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

#### **POLICY CONTROLS**

##### **Warringah Section 94A Development Contribution Plan**

Section 94 contributions were levied on the Development Application.

#### **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;





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

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

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

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

This modification seeks consent for numerous, but relatively minor, changes to the approved childcare centre. The most visible and important of these changes are the replacement of a wall on the eastern side of the driveway with a 1.8m palisade fence, changing the fence along the Tralee Avenue boundary and a section of the eastern boundary to a 1.8m high palisade fence, and the addition of a Colorbond fence along the western boundary. The remaining changes are either internal or of such a minor nature that they will not be readily noticeable. There are no changes to the height, or setbacks of the main building on the site.

The proposed and modified fences and walls are all within the property boundary (i.e. not on the boundary) but act as boundary fences. The Tralee Avenue fence location has been adjusted in order to retain a significant established tree.

Given these fences are within the site, they are structures (rather than boundary fences) and have triggered assessments against the front and side boundary setback controls. These assessments have found that the modifications are acceptable and will not result in any unreasonable amenity impacts to any surrounding properties.

No submissions objecting to the proposal were received and there are no contentious issues. In this regard, the modifications are recommended for approval.

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

## RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0121 for Modification of Development Consent DA2016/0645 granted for Construction of a child care centre with basement carpark and signage on land at Lot 2 DP 1216924, 22 Tramore Place, KILLARNEY HEIGHTS, subject to the conditions printed below:



**A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:**

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
S96.01 Revision G	7 March 2018	Armada Architects
S96.02 Revision G	7 March 2018	Armada Architects
S96.03 Revision G	7 March 2018	Armada Architects
S96.04 Revision G	7 March 2018	Armada Architects
S96.05 Revision G	7 March 2018	Armada Architects

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
104 Issue J	March 2018	Arcadia Landscape Architecture
105 Issue J	March 2018	Arcadia Landscape Architecture

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





**FOR S96  
APPROVAL**

196 ELEVATION - EXTERNAL ELEVATION 2	Date 7/03/2018 Drawn PMJ	Scale As Indicated	Revision G
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REVISIONS	DATE
1. ISSUE DESCRIPTION	10/05/2018
2. TRAMORE PLACE	10/05/2018
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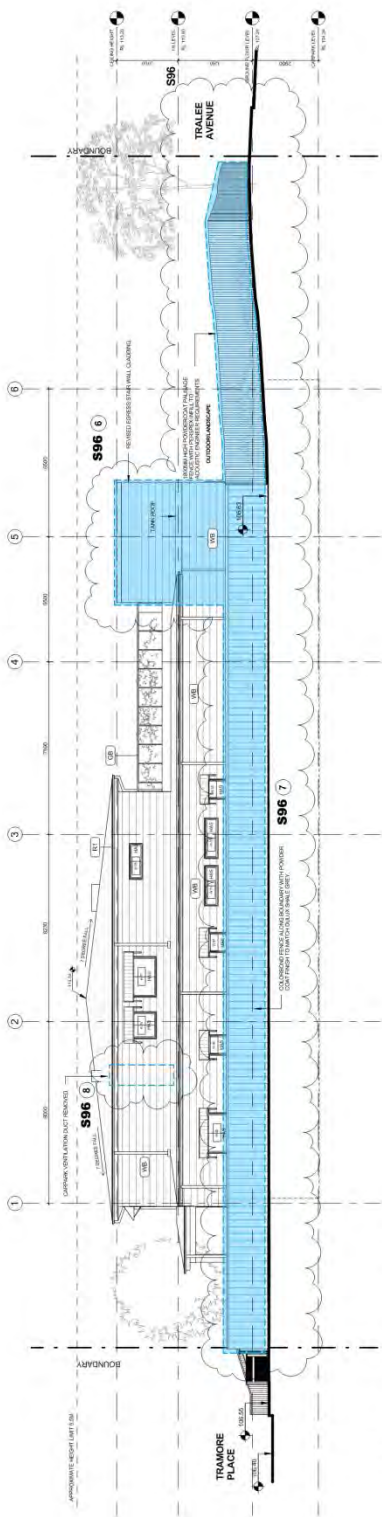
**FOR S96  
APPROVAL**

**ARMADA**  
Architecture Masterplanning and Design Agency  
Studio 55 Level 5  
8 Macquarie Street  
Sydney NSW 2000  
direct@armadadecor.com.au

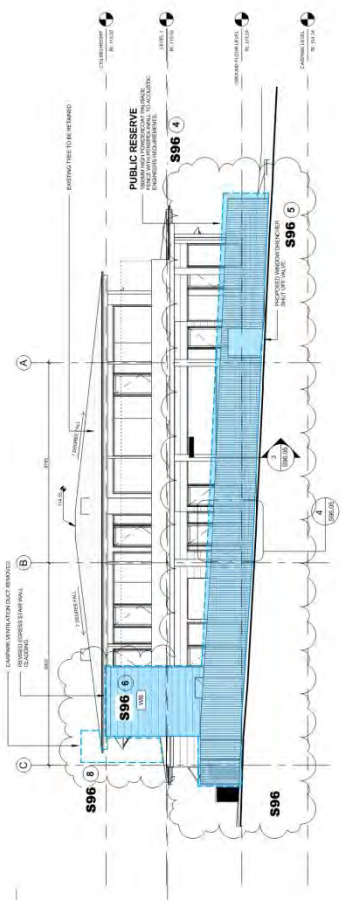
ARMADA is a registered architect with the NSW Architectural Board. We are a team of experienced architects, interior designers, landscape architects, and urban planners. We have a proven track record of delivering high-quality, innovative designs for a wide range of commercial and residential projects. Our team is passionate about creating spaces that are both functional and beautiful, and we are committed to providing our clients with the highest level of service and expertise.

**Project**  
Proposed Childcare Center  
20-24 Tramore Street, Glenmore Heights NSW

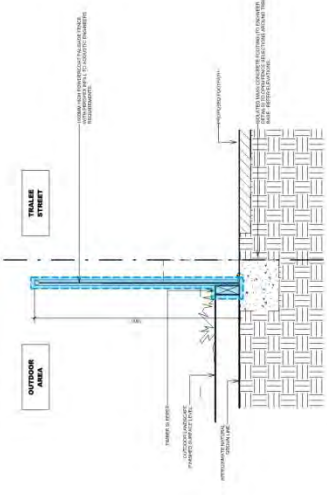
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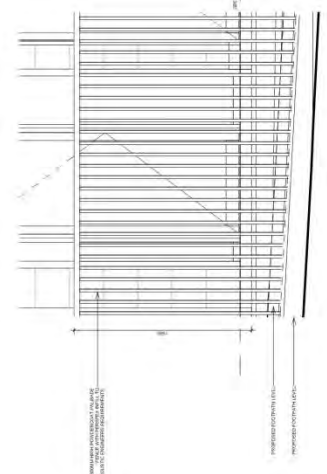
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**2 SOUTH ELEVATION - SECTION 96**  
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**3 REAR OUTDOOR FENCE ELEVATION DETAIL - SECTION 96**  
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**4 REAR OUTDOOR FENCE ELEVATION DETAIL - SECTION 96**  
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ITEM 3.2	DA2018/0395 - 42-46 GOVERNMENT ROAD, BEACON HILL - UPGRADE AND EXTENSIONS TO AN EXISTING TELECOMMUNICATIONS FACILITY (MOBILE PHONE BASE STATION)
REPORTING OFFICER	STEVE FINDLAY
TRIM FILE REF	2018/359703
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, **refuses** Application No. DA2018/0395 for upgrade and extensions to an existing telecommunications facility (mobile phone base station) at Lease Plan Lot 3 DP 851446 and Part Lot 54 DP 1175875, 42-46 Government Road, Beacon Hill subject to the conditions and for the reasons set out in the Assessment Report.

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## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2018/0395
<b>Responsible Officer:</b>	Phil Lane
<b>Land to be developed (Address):</b>	Lease Plan Lot 3 DP 851446 Part Lot 54 DP 1175875, 42 - 46 Government Road BEACON HILL NSW 2100
<b>Proposed Development:</b>	Upgrade and extensions to an existing telecommunications facility (mobile phone base station)
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	No
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Local Planning Panel
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Sydney Water Corporation
<b>Applicant:</b>	Axicom Pty Ltd
<b>Application lodged:</b>	15/03/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Infrastructure
<b>Notified:</b>	30/03/2018 to 26/04/2018
<b>Advertised:</b>	31/03/2018
<b>Submissions Received:</b>	3
<b>Recommendation:</b>	Refusal
<b>Estimated Cost of Works:</b>	\$ 150,000.00

### ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest

- groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## **SUMMARY OF ASSESSMENT ISSUES**

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
 Warringah Local Environmental Plan 2011 - Warringah Local Environmental Plan 2011  
 Warringah Local Environmental Plan 2011 - Part 2 Permitted or prohibited development  
 Warringah Local Environmental Plan 2011 - 2.3 Zone objectives and Land Use Table  
 Warringah Development Control Plan - A.5 Objectives  
 Warringah Development Control Plan - D7 Views  
 Warringah Development Control Plan - D9 Building Bulk  
 Warringah Development Control Plan - E7 Development on land adjoining public open space

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lease Plan Lot 3 DP 851446 Part Lot 54 DP 1175875 , 42 - 46 Government Road BEACON HILL NSW 2100
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northern side of Ethie Road and western side of Government Road, known as Waterboard Reserve 42 - 46 Government Road, Beacon Hill (Lot 54 in DP1175875).</p> <p>The site is irregular in shape with a frontage of 182.12m along Ethie Road and a of frontage 85.505m along Government Road. The site has a surveyed area of 34770m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a large water reservoir owned by Sydney Water.</p> <p>The site currently has a free standing monopole which is currently 35m in height with antennas, headframe and associated infrastructure.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by with a mix of residential and commercial uses with a number of properties abutting the subject site. Adjoining the site to the north and southeast is low density residential (dwelling houses) and to the west is a mix of commercial buildings. Also to the north of the site is Mills Reserve.</p>

Map:



#### SITE HISTORY

**DA2008/0485** - One (1) into five (5) lot Torrens title subdivision was approved 29 December 2008 which created the four (4) residential lots in the south-west corner of the site.

**March 1994** - The existing telecommunications facility (mobile telephone base station) including monopole and headframe on the subject site was erected by Vodafone under the Telecommunications Act 1991. Vodafone was required to consult with Council about the proposal, but was not required to obtain approval under any State or Local law or regulations, therefore Council had no power to approve or refuse such facilities.

**20 October 1996** - Additions to an existing telecommunications facility, comprising:

- Installation of nine (9) additional antennae situated below the existing antennae and two (2) additional microwave dishes.

The above works allowed Optus to co-locate with Vodafone on the existing monopole structure.

#### PROPOSED DEVELOPMENT IN DETAIL

The proposal is for a upgrade and extension to an existing mobile phone base station.

Works consist of the following:

- The extension in the height of the existing monopole structure by 6.4m;
- The installation of a Headframe on the proposed extension bringing the total height of the

- structure from 35m to 41.40m;
- The installation of three (3) panel antennas on the proposed headframe;
- The installation of ten (10) Remote Radio Units (RRUs) on the proposed headframe;
- The installation of ancillary equipment including feeder cables, the aforementioned RRUs, and an GPS antenna.

**Note:** There was no Prelodgement Meeting held with Council prior to the lodgement of this Development Application.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

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

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. Should the Development Application be approved, these matters will be addressed via a condition of consent.</p> <p>Clauses 54 and 109 of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations.</p> <p>Additional information was requested on 21 March 2018 for a Bushfire Report and Clause 4.6 Variation Statement (Building Height). After review of the Warringah Bush Fire Prone Land Map 2016 it was considered that a bushfire report was not required for the proposed development. On 29 March 2018 the applicant submitted a Clause 4.6 Variation Statement (Building Height) to address this clause within the Warringah Local Environmental Plan 2011.</p>



Section 4.15 Matters for Consideration'	Comments
	<p>Clause 92 of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. Should the Development Application be approved, these matters will be addressed via a condition of consent.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). Should the Development Application be approved, these matters will be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p><b>(i) Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report. In summary, it is noted that the proposed structure is not supported based on its negative visual and scenic impact to the character of the residential area and the broader locality.</p> <p><b>(ii) Social Impact</b>  The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p><b>(iii) Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development based on the excessive scale and visual impact of the development on the residential area and broader locality.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Clause 4.3 Height of Buildings of WLEP 2011, Zone Objectives of WLEP 2011, Clause D9 Building Bulk of WDCP 2011 and the Zone Objectives of WDCP 2011 and will result in a development which will have an unacceptable impact on the visual and scenic quality of the area, and approval will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Mr Ian James Strong	17 Mills Place BEACON HILL NSW 2100
James Meiklejohn	
James Leslie Meiklejohn Annabel Dinah Meiklejohn	62 Arnhem Road ALLAMBIE HEIGHTS NSW 2100

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

1. Height;
2. Visual impact;
3. Misleading information within the Statement of Environmental Effects;
4. Electromagnetic Energy (EME) and health concerns; and
5. Location close to residential premises, childcare centres and workplaces.

The matters raised within the submissions are addressed as follows:

### 1. Height

Concerns were received regarding the height of the existing and proposed structure.

#### Comment:

The site is zoned R2 Low Density Residential and therefore has a 8.5m building height limit. The existing structure is 35m in height and therefore exceeds this control by 26.5m (a variation of 311.8%). This proposal will add a further 6.4m in height and so the proposed structure will have a height of 41.4m (a variation of 387.1%).

A written variation (Clause 4.6 Exceptions to Development Standards) was submitted with the application which states:-

*"It is not considered that the proposal will have a detrimental impact on the scenic quality of the area. The upgrade to the existing facility will have a better visual outcome than the establishment of a new facility and as such Axicom are requesting a variation to this Development Standard."*

*However, the proposed increase in height in will create further visual impacts on the surrounding area in particular from residential properties and public spaces and the structure is not compatible with the height and scale of surrounding and nearby development and fails the merit objectives for this zone.*

*Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP and the objectives specified in Section 1.3 (a) of the Environmental Planning and Assessment Act, 1979.*

*Accordingly, the assessment finds that the proposal is not supported on the grounds of height in this*

*particular circumstance.*

## 2. Visual Impact

Concerns were raised in relation to the proposed structure creating further visual impact when viewed from the surrounding properties.

### Comment:

A number of site inspections were undertaken during the assessment of this application. It is noted that the existing monopole telecommunications structure is a dominant element within the near vicinity and can be seen from surrounding residential properties, public spaces and roads. The increased height will exacerbate this situation and it is considered that if the structure is approved at the higher level, additional infrastructure can also be added via the provisions of State Environmental Planning Policy (Infrastructure) 2007 via Division 21 Telecommunications and other Communication Facilities which includes development without consent and exempt development.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP and the objectives specified in Section 1.3 (a) of the Environmental Planning and Assessment Act, 1979.

Accordingly, this assessment finds that the proposal is not supported on the grounds of excessive visual impact in this particular circumstance.

## 3. Misleading information within the Statement of Environmental Effects (SEE);

Concerns were raised in relation to misleading information to minimise proposed impacts of the proposed development.

### Comment:

A review of the SEE supplied by Axicom Services Pty Ltd. was carried out and the following is stated:

*"The extension of the existing structure by 3.50m"*

*"Optus are currently present at the site however utilise antennas at a lower than required aperture (35m). In order to significantly improve Optus coverage within the area, Optus will install new equipment at a higher elevation of 38.5m. In order to do this, the extension of the structure by 3.5m is required. This will allow for Optus to locate their equipment onto the structure without infringing on the capacity or coverage of the other carriers currently present on the structure and to better service the Beacon Hill area."*

The existing structure is 35m in height and the proposal will see the structure increase to 41.4m in height, which is an extension of 6.4m. Therefore, it is considered that these comments in the SEE are misleading and incorrect.

Further comments within SEE:

*"The existing telecommunications facility is an integral part of the existing mobile phone network infrastructure, maintaining connectivity for residents, visitors and employees in the region, and importantly*

*providing coverage and capacity for the Beacons Hill population. The existing facility has been identified by Optus to require an upgrade. The proposed installation of equipment will provide improved telecommunication coverage within the Beacon Hills area for Optus customers."*

There is no evidence or data supplied within this application demonstrating the increased height will improve telecommunication coverage in the area which would justify the substantial increase in height by an additional 6.4m (or 18.3%) on the existing structure of 35m to 41.4m as proposed by this application. Again, it is considered that information is misleading.

Notwithstanding the misleading information within the SEE, the plans submitted with the DA and placed on notification and advertising show the correct height.

#### **4. Electromagnetic energy (EME) and health concerns;**

Comment: The application includes an Electromagnetic Energy (EME) Report in this report Council is not the Authorised Regulatory Authority (ARA) to assess human exposure levels to radio frequency (EME) emissions. The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) are the Authorised Regulatory Authority to assess and condition any application relating to this matter.

Notwithstanding the above, the EME Report show that the levels are within the safe standards.

#### **5. Location close to residential premises, childcare centres and workplaces;**

Concerns were raised in relation to the location of the existing telecommunications monopole and the proximity to residential homes, childcare centres and workplaces. One submission states: -

*"A Childcare Centre, 'Explore & Develop French's Forrest', operates approximately 105m (as the crow flies) from the Telecommunications Facility."*

Comment:

It is noted that this structure is in close proximity to residential properties, childcare centres and workplaces. This application can only consider the existing location and the impacts in this locality. It is noted that the applicant has not investigated alternative locations and/or other ways to ensure their services are improved. As stated previously, the development within the R2 Low Density Residential zone should be community based and should other structures be permitted, they need to be of a nature and composition that is suitable and appropriate in the area.

Based on the scale and height of this proposal, the proposed development and the location is not considered to be appropriate.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP and the objectives specified in Section 1.3 (a) of the Environmental Planning and Assessment Act, 1979.

Accordingly, this assessment finds that the proposal is not supported on the grounds of location and siting in this particular circumstance.

## MEDIATION

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

## REFERRALS

Internal Referral Body	Comments	
Environmental Health (Industrial)	Is the proposal for an industrial use?	YES mobile phone tower
	Was sufficient documentation provided appropriate for referral?	YES
	Are the reports undertaken by a suitably qualified consultant?	YES
	Have you reviewed the Statement of Environmental Effects, and consider ongoing use, such as: - Processes with emphasis on potential pollution (air, noise, water and land) - Hazardous Materials, liquids stored on site - Waste storage, disposal. - Mechanical ventilation	YES
	Have you Consider impact of noise, hours of operation, location to nearest residential, location of equipment, times of deliveries, noise management plans, acoustic reports etc.	YES
	If the proposal is a scheduled premises have you recommended that the DAO refer the proposal to OEH?	N/A
	<b>General Comments</b> The application is for the extension and additions to an existing mobile phone tower/wireless base station.  The Statement of Environmental Effects contains an acoustic review that is satisfactory for assessment and substantiates that an acoustic report is not required for the development. It is stated that the noise emanating from the structure will be similar to a domestic air conditioner and therefore a condition of consent has been incorporated for the ongoing operation of the facility to maintain noise levels so it is not likely to cause nuisance.  The application includes an electromagnetic energy (EME) report. Council is not the Authorised Regulatory Authority (ARA) to assess applications for human exposure levels of radio frequency (EME) emissions. The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) are the Authorised Regulatory Authority to assess and condition any application relating to this matter.	
	<b>Recommendation</b>	APPROVAL -



Internal Referral Body	Comments	
		subject to conditions
NECC (Bushland and Biodiversity)	<p>Council's Bushland and Biodiversity section raise no objection to the development application.</p> <p>Should advice be returned from the RFS that APZ vegetation clearing is required, the impact of this activity will need to be addressed and reassessment by Bushland and Biodiversity will be necessary.</p>	
Strategic & Place Planning (Heritage Officer)	HERITAGE COMMENTS	
	Discussion of reason for referral	
	<p>This application has been referred as the subject site contains a heritage item. The site, 42-46 Government Road, Beacon Hill contains <b>Item I130 - Warringah Reservoir (WS 0131) and attached valve house</b>, which is listed in Schedule 5 of WLEP 2011.</p>	
	Details of heritage items affected	
	<p>Details of this heritage item, as contained within the Warringah Heritage Inventory, are:</p> <p><b>Statement of Significance</b> Warringah Reservoir (WS 0131) is an unusually large concrete reservoir (classified as a dam AN COND guidelines), serving the needs of growing suburban communities. It is similar in some respects to covered reservoirs, having an attached valve house and it demonstrates significant variation from covered reservoir technology.</p> <p><b>Physical Description</b> Warringah Reservoir (WS 131) is a concrete reservoir, lozenge shaped, partly rock cut and partly in embankment. It shares several features with covered reservoirs, although it has only recently been roofed over. The attached valve house with Art Deco ornamentation, is constructed in concrete, though the actual valves were not visible upon brief inspection. Above the entrance door is the following inscription: "19 M.W.S. &amp; D.B. 35". A skid hut is located in the grounds. The depot itself is not significant.</p>	
	Other relevant heritage listings	
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No
	Australian Heritage	No
	Comment if applicable	

Internal Referral Body	Comments										
	<table border="1"> <tr> <td>Register</td><td></td></tr> <tr> <td>NSW State Heritage Register</td><td>No</td></tr> <tr> <td>National Trust of Aust (NSW) Register</td><td>No</td></tr> <tr> <td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td></tr> <tr> <td>Other</td><td>No</td></tr> </table>	Register		NSW State Heritage Register	No	National Trust of Aust (NSW) Register	No	RAIA Register of 20th Century Buildings of Significance	No	Other	No
Register											
NSW State Heritage Register	No										
National Trust of Aust (NSW) Register	No										
RAIA Register of 20th Century Buildings of Significance	No										
Other	No										
	<p><b>Consideration of Application</b></p> <p>This application proposes upgrade and extension of the existing telecommunications facilities (mobile phone tower) which exists on this site. The stated proposal is to increase the height of the mobile phone tower by 3.5 metres, however the submitted plans state that the overall height will increase from 35 m to 41.5 m (an increase of 6.5 metres).</p> <p>The application proposes upgrade of existing facilities rather than the introduction of a new mobile phone tower. This existing telecommunications facility is located in the southern western corner of the site, some 50 metres from the western extent of the heritage listed reservoir and 100 metres from the heritage listed Art Deco valve house.</p> <p>Given the separation between the telecommunications facility and the heritage significant buildings on the site, it is considered that there will be no adverse impact upon the heritage significance of the water reservoir and its attached valve house.</p> <p><b>Therefore, no objections are raised on heritage grounds.</b></p> <p><b>Consider against the provisions of CL5.10 of WLEP 2011</b>  Is a Conservation Management Plan (CMP) Required? No  Has a CMP been provided? N/A  Is a Heritage Impact Statement required? Yes  Has a Heritage Impact Statement been provided? Not as a separate report - addressed in SEE (7.3.2)</p>										
External Referral Body	Comments										
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.										

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

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

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

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

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

#### **SEPP 55 - Remediation of Land**

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

#### **SEPP (Infrastructure) 2007**

##### Ausgrid

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

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

##### Comment:

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

##### Division 21 - Telecommunications Facilities

Division 21 of SEPP (Infrastructure) permits the development of 'Telecommunication facilities' which are defined as;

*"(a) any part of the infrastructure of a telecommunications network, or*



*(b) any line, cable, optical fibre, fibre access node, interconnect point, equipment, apparatus, tower, mast, antenna, dish, tunnel, duct, hole, pit, pole or other structure in connection with a telecommunications network, or*  
*(c) any other thing used in or in connection with a telecommunications network."*

Clause 115 of the SEPP specifically permits development with consent as follows:

*"(1) Development for the purposes of telecommunications facilities, other than development in clause 114 or development that is exempt development under clause 20 or 116, may be carried out by any person with consent on any land."*

Accordingly, the telecommunication facility proposed at 42 - 46 Government Road, Beacon Hill can be considered as a development permitted with consent, even though it is a prohibited use under the provision of the Warringah LEP.

As the determining Authority, Council must consider "any guidelines concerning site selection, design, construction or operating principles for telecommunications facilities that are issued by the Secretary for the purposes of this clause and published in the Gazette".

The principles of the Guideline are addressed below.

Principle	Consideration	Consistent
Principle 1: A telecommunications facility is to be designed and sited to minimise visual impact.	The proposed extension to the monopole and antennae structure is considered to be visually unacceptable and of excessive height.	No
Principle 2: Telecommunications facilities should be collocated wherever practical	The application satisfactorily demonstrates that co-location is not an available or practical option in this case.	Yes
Principle 3: Health standards for exposure to radio emissions will be met.	The application contains an EME Environmental Report showing the predicted levels of electromagnetic energy to comply with the safety limits imposed by the Australian Communications and Media Authority and the Electromagnetic Radiation Standard, and demonstrating compliance with the Mobile Phone Networks Code.	Yes
Principle 4: Minimise disturbance and risk, and maximise compliance	The application demonstrates the facility is designed and can be installed and operated so the maximum human exposure levels to radio frequency emissions comply with the Radiation Protection Standard. Sydney Airport is approximately 20km from the site. The siting and height of the facility meets the requirements of the Civil Aviation Regulations 1988 and Airports (Protection of Airspace) Regulation 1996 of the Commonwealth. A consent condition requires written verification to be provided prior to	Yes

the issue of a Construction Certificate.

The proposed facility minimises site disturbance and impacts on the natural attributes of the site.

#### **Warringah Local Environmental Plan 2011**

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	No

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	41.4m (Proposed)	387.1%	No
		6.4m (Additional)	12.3%	
		35m (Existing)	311.8%	No

#### Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	No
Part 2 Permitted or prohibited development	No
2.1 Land use zones	No
2.2 Zoning of land to which Plan applies	No
2.3 Zone objectives and Land Use Table	No
Land Use Table	Yes
Part 4 Principal development standards	No
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
Part 5 Miscellaneous provisions	Yes
5.10 Heritage conservation	Yes
Part 6 Additional Local Provisions	Yes
6.4 Development on sloping land	Yes
Schedule 5 Environmental heritage	Yes

#### Detailed Assessment

#### **Warringah Local Environmental Plan 2011**

Is the development  
permissible under WLEP  
2011?

**No**

A Telecommunications Facility is a prohibited land use in the R2 Low Density Residential zone. However, this use is permissible with consent under Clause 115 of State Environmental Planning Policy (Infrastructure) 2007.

After consideration of the  
merits of the proposal, is the  
development consistent  
with:

Aims of the LEP?

**No**

The development does not satisfy the Aims specifically (clause 1.2(f) of the WLEP) which requires:

in relation to environmental quality, to:

- (i) achieve development outcomes of quality urban design, and
- (ii) encourage development that demonstrates efficient and sustainable use of energy and resources, and
- (iii) achieve land use relationships that promote the efficient use of infrastructure, and
- (iv) ensure that development does not have an adverse effect on streetscapes and vistas, public places, areas visible from navigable waters or the natural environment, and
- (v) protect, conserve and manage biodiversity and the natural environment, and
- (vi) manage environmental constraints to development including acid sulfate soils, land slip risk, flood and tidal inundation, coastal erosion and biodiversity.

The development creates a visually unacceptable structure within an area of environmental significance. The residential, commercial and public spaces will be detrimentally impacted and accordingly, the development as proposed does not satisfy the aims of the LEP.

Zone objectives of the  
LEP?

**No**

## **Part 2 Permitted or prohibited development**

A Telecommunications Facility is a prohibited land use in the R2 Low Density Residential zone. However, this use is permissible with consent under Clause 115 of State Environmental Planning Policy (Infrastructure) 2007.

### **2.3 Zone objectives and Land Use Table**

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

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

Comment: Given the proposal is a telecommunications upgrade to an existing monopole, it is considered that this merit consideration is not applicable.

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

Comment: The applicant has stated that the proposal "will improve telecommunications within the area" and therefore will meet the day to day needs of residents and users within the surrounding area. It is considered that the development satisfies this objective.

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

Comment: The proposed increased height will create greater visual impact given the structure will be more visually prominent when viewed from surrounding residents, properties and public open spaces.

It is therefore considered that the proposal is inconsistent with the above zone objective.

#### 4.6 Exceptions to development standards

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

Requirement:	8.5m
Proposed:	41.4m
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	387.1%

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 WLEP 2011. The assessment is detailed as follows:

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

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the WLEP 2011 is a development standard.

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

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



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

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

Comment: The proposed increased height of the existing monopole will be generally inconsistent with the height and scale of the adjoining and surrounding commercial buildings to the west and northwest namely Nos. 22, 24, 26 & 28 Rodborough Road, Frenchs Forest.

Additionally, the site is zoned R2 Low Density Residential zone which has a 8.5m height limit. The site is also surrounded by residential dwellings of one and two storeys in height and it is considered that given the substantial difference in height and scale, the proposal is inconsistent with this objective.

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

Comment: The proposed increased in height will create greater visual impact given the structure will be more visible prominent when viewed from surrounding residents, properties and public open spaces.

It is therefore considered that the proposal is inconsistent with the objective.

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

Comment: The proposed monopole will be more visually prominent given the increased height and it is considered that there will be an adverse impact on the scenic quality when viewed from surrounding parks and bushland areas.

It is therefore considered that the proposal is inconsistent with this objective.

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

Comment: Given the increased height of the existing structure by 6.4m (18.3%) it is considered that the visual impact of the development when viewed from public places will not be appropriately manage and create further visually impacts on these spaces.

It is therefore considered that the proposal is inconsistent with this objective.

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

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

- *"To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of*

residents.

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

**Is the variation to the development standard consistent with the objectives of Clause 4.6 of the WLEP 2011?**

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

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

Comment: The development standard to be varied is the 8.5m height control applying in the zone. The existing structure is 35m in height, which is 26.5m over the height limit or 311.8% over the control. The proposed increase in height of 6.4m will see the monopole increased to 41.4m in height, which will be 32.9m over the height limit and a variation to the control of 387.1%, which is significant departure from the standard in this case.

Given the above, it is considered that the magnitude of the variation is extremely high and this degree of flexibility cannot be exercised in this case. The non-compliance is excessive and is inconsistent with the surrounding development and will compromise the residential amenity, view lines and visual building bulk which cannot be supported in this instance.

It is considered that proposal does not meet this objective.

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

Comment: Given the reasons above, it is considered the increased height of the existing structure will not achieve a better outcome and therefore allowing flexibility in this situation will be detrimental to the surrounding residential amenity, public spaces and adjoining properties.

It is considered that proposal does not meet this objective.

(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 submitted a formal variation request to this development

standard (Clause 4.3 Height of buildings) via the submission of a Clause 4.6 Exceptions to development standard and stated the following in support of the proposed development: -

*"Axicom notes that the increase in scale does not meet with the maximum heights requirements outlined in the Heights of Building Map of the Warringah Local Environment Plan 2011. Axicom is requesting a variation to development standards which can be issued under 4.6 of the Warringah Local Environment Plan (WLEP). The standard which Axicom wish to vary is development standard 4.3 of the WLEP. This is because the nature of telecommunications equipment requires the antenna and transmission equipment to sit above any possible obstacles.*

*The State Environmental Planning Policy (Infrastructure) 2007 (iSEPP) was introduced to facilitate the delivery of infrastructure across the State under the EP&A Act 1979. The iSEPP has provisions Axicom suggests that the following proposal offers the best solution to the residents of Beacon Hill as it will provide greater telecommunications opportunity, increased opportunity for co-location and in turn reduces the need for more facilities. The objectives of clause 4.3 of the WLEP are detailed below.*

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

- (a) To ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) To minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) To minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) To manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

*It is not considered that the proposal will have a detrimental impact on the scenic quality of the area. The upgrade to the existing facility will have a better visual outcome than the establishment of a new facility and as such Axicom are requesting a variation to this development standard."*

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

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

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

Comment: The applicants response argues that the increased height to the existing structure will be "a better visual outcome than the establishment of a new facility." However, this is not the test. The proposal must be satisfactory on its own individual merits. Therefore, it is considered the request is poorly based given the site is located within a R2 Low Density Residential zone surrounding by one and two storey dwellings with some four storey commercial buildings and therefore is substantial higher and bigger in scale to surrounding and nearby development.

The proposal will create further visual impact on the surrounding area and will be more visually prominent when viewed from residential properties and surrounding commercial properties. It is considered that the proposal will not mitigate visual impact when viewed from public places such as parks, reserves including bush environments, roads and community facilities.

*(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 inconsistent with the objectives of the R2 Low Density Residential zone in the WLEP 2011.

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

Comment: As the variation exceeds 10%, it is not possible to assume the concurrence of the Director-General. Concurrence can now only be assumed if the consent authority has first considered the following matters:

- Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.

Council is of the opinion that there are no matters of significance for State or regional environmental planning as a consequence of the variation.

- The public benefit of maintaining the development standard.

There is public benefit in maintaining the development standard as the impacts on the community are unacceptable and beyond reasonable expectations.

The applicants argument is not supported given that the proposal demonstrates inconsistency with the existing heights of any building and/or structure within the vicinity and will create further visual amenity issues within the locality.

The other consideration is whether there are any other matters which are required to be taken into consideration before refusing this application. In the opinion of Council's staff, there are not considered to be any other matters that are required to be taken into consideration.

## Warringah Development Control Plan

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	No	No
A.7 Exhibition, Advertisement and Notification of Applications	Yes	Yes
Part C Siting Factors	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Part D Design	Yes	Yes
D3 Noise	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
D4 Electromagnetic Radiation	No	No
D7 Views	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D12 Glare and Reflection	Yes	Yes
Part E The Natural Environment	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	No	No
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

### A.5 Objectives

#### Objectives of DCP

The objectives of the DCP are not met by the proposed development as is demonstrated in the following:

- ***To ensure development responds to the characteristics of the site and the qualities of the surrounding neighbourhood***

Comment: The development will be detrimental to the bushland character of the surrounding area and the height and scale of the development generally below the tree canopy and ridgelines.

- ***To ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian areas and creates an attractive design outcome***

Comment: The development does not create a positive design outcome.

- ***To inspire design innovation for residential, commercial and industrial development***

Comment: It is considered that the proposed design does not demonstrate inspiration or innovation for the surrounding residential, commercial and industrial developments within the nearby vicinity.

- ***To provide a high level of access to and within development.***

Comment: N/A

- ***To protect environmentally sensitive areas from overdevelopment or visually intrusive development so that scenic qualities, as well as the biological and ecological values of those areas, are maintained***

Comment: The existing site is in close proximity to residential, commercial and public open spaces areas and is a visually important area within the locality. Scenic qualities and natural qualities are detrimentally impacted by the further additions to the telecommunications tower.

- ***To achieve environmentally, economically and socially sustainable development for the community of Warringah***

Comment: This is not achieved through the tall visually unattractive structure and considered inconsistent with the above objective.

## D7 Views

### Merit consideration

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

- *To allow for the reasonable sharing of views.*

#### Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

### **1. Nature of the views affected**

*"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. 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, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".*

#### Comment to Principle 1:

Views obtained from properties from the north of the proposed development (in particular from Mills Place) are views of the City, North Sydney, Chatswood, Bondi Junction and ocean and coastal and headland views.

### **2. What part of the affected property are the views obtained**

*"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 to Principle 2:

The views are achieved over the rear boundaries of these properties from both a sitting and standing position.

### 3. Extent of impact

*"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% 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 to Principle 3:

The impact of the proposed development on the amount of views lost maybe considered to be minor. However, the impacts of the additions to the structure on the quality of views are considered to be severe and detrimental to the adjoining and surrounding properties.

### 4. Reasonableness of the proposal that is causing the impact

*"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 to Principle 4:

The existing structure is 35m in height and the proposal will add a further 6.4m, therefore the resultant structure will be 41.4m in height. It is considered that the structure maybe increased even further by later additions under SEPP Infrastructure via exempt and development without consent. It is considered that alternatives to this proposal should be explored and/or a more skilful design utilized to reduce the impact on surrounding residential properties and public spaces.

Additionally, it is noted that impacts on public domain views was set by Rose Bay Marina Pty Limited v Woollahra Municipal Council and Anor [ [2013] NSWLEC 1046.

The first step of this stage is to identify the nature and scope of the existing views from the public domain. This identification should encompass (but is not limited to):

*"The first step of this stage is to identify the nature and scope of the existing views from the public*

domain. This identification should encompass (but is not limited to):

- the nature and extent of any existing obstruction of the view;
- relevant compositional elements of the view (such as is it static or dynamic and, if dynamic, the nature and frequency of changes to the view);
- what might not be in the view - such as the absence of human structures in the outlook across a natural area (such as the view from Kanangra Walls);
- is the change permanent or temporary; or
- what might be the curtilages of important elements within the view."

*The second step is to identify the locations in the public domain from which the potentially interrupted view is enjoyed.*

*The third step is to identify the extent of the obstruction at each relevant location.*

- *Unlike Tenacity (which adopts the proposition that sitting views are more difficult to protect than standing views), the impact on appreciation of a public domain view should not be subject to any eye height constraint. A public domain view is one that is for the enjoyment of the whole population, old or young and whether able-bodied or less mobile. It is not appropriate to adopt some statistically derived normative eye height for the assessment of such views (such as the conventionally adopted 1.6m eye height for the assessment of overlooking privacy impacts). Indeed, some views (such as that from Mrs Macquarie's Chair toward the Opera House and Harbour Bridge) may well be ones likely to be enjoyed frequently from a seated position.*

*The fourth step is to identify the intensity of public use of those locations where that enjoyment will be obscured, in whole or in part, by the proposed private development.*

*The final step to be identified is whether or not there is any document that identifies the importance of the view to be assessed.*

- *This will encompass specific acknowledgment of the importance of a view (for example, by international, national, state or local heritage recognition) or where the relevant planning regime promotes or specifically requires the retention or protection of public domain views."*

Comment: The views from Mills Reserve are of the ocean, headland, city and district and there are views



from many public spaces within the area in the locality that will be detrimentally impacted by the structure. The additions to this existing monopole will add further unsightliness, which is not consistent with the intention of retaining quality intact views, or at least further detract from those present views.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposal does not demonstrate or encourage innovation nor does it improve the urban environment.

- *To ensure existing canopy trees have priority over views.*

Comment:

Existing canopy trees will not be affected by the proposed development.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in Section 1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## D9 Building Bulk

### Merit consideration

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

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment: The addition of a further 6.4m to the structure, which is already 35m in height is significantly disproportionate to existing urban environment within which it sits and does not demonstrate good design or innovation or improve the urban environment. It is concluded that the proposed development is inconsistent with this objective.

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment: The proposed additions to the existing monopole, including antennas and associated structures will be out of scale with any structures surrounding it and create a further visual impact to residential and public spaces. It is concluded that the proposed development is inconsistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in S1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

#### **E7 Development on land adjoining public open space**

##### Merit consideration:

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

- *To protect and preserve bushland adjoining parks, bushland reserves and other public open spaces.*

Comment: The proposed additions to the telecommunications facility is not consistent with the public open space landscape character. The height, materials and siting will be to the detriment of the enjoyment of the open space and will negatively alter the visual aesthetic of Mills Reserve.

- *To ensure that development responds to its adjacent surroundings to preserve and enhance the natural qualities of the environment.*

Comment: The proposed development is considered not to respond well to the adjacent surroundings nor does it preserve or enhance the natural qualities of the environment.

- *Development on land adjoining open space is to complement the landscape character and public use and enjoyment of the adjoining parks, bushland reserves and other public open spaces.*

Comment: The proposed additions to the telecommunications facility is not consistent with the public open space landscape character. The height, materials and siting will be detrimental to the enjoyment of the open space and will negatively alter the visual aesthetic of Mills Reserve.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in Section 1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

## CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

## CONCLUSION

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

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

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

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

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

The proposed alterations to the existing 35m high monopole will see the structure extended to a height of 41.4m. It is considered that this height, scale and character is incompatible with any building or structure within the vicinity. Additionally, the existing structure is visually prominent and the addition of height will exacerbate the visual impacts for the surrounding community below and from afar.

It is also noted under the provisions of SEPP (Infrastructure) 2007, additional infrastructure can be added to the monopole at this proposed height of 41.4m via development without consent and exempt development, which will compound the situation and add further unacceptable visual impacts.

The assessment has concluded that the proposal will result in an unreasonable and unacceptable impact on the existing residential, commercial and public spaces, particularly with regard to visual impacts, outlooks and views and the building height and building bulk and is not in the public interest and accordingly the application is recommended for refusal.

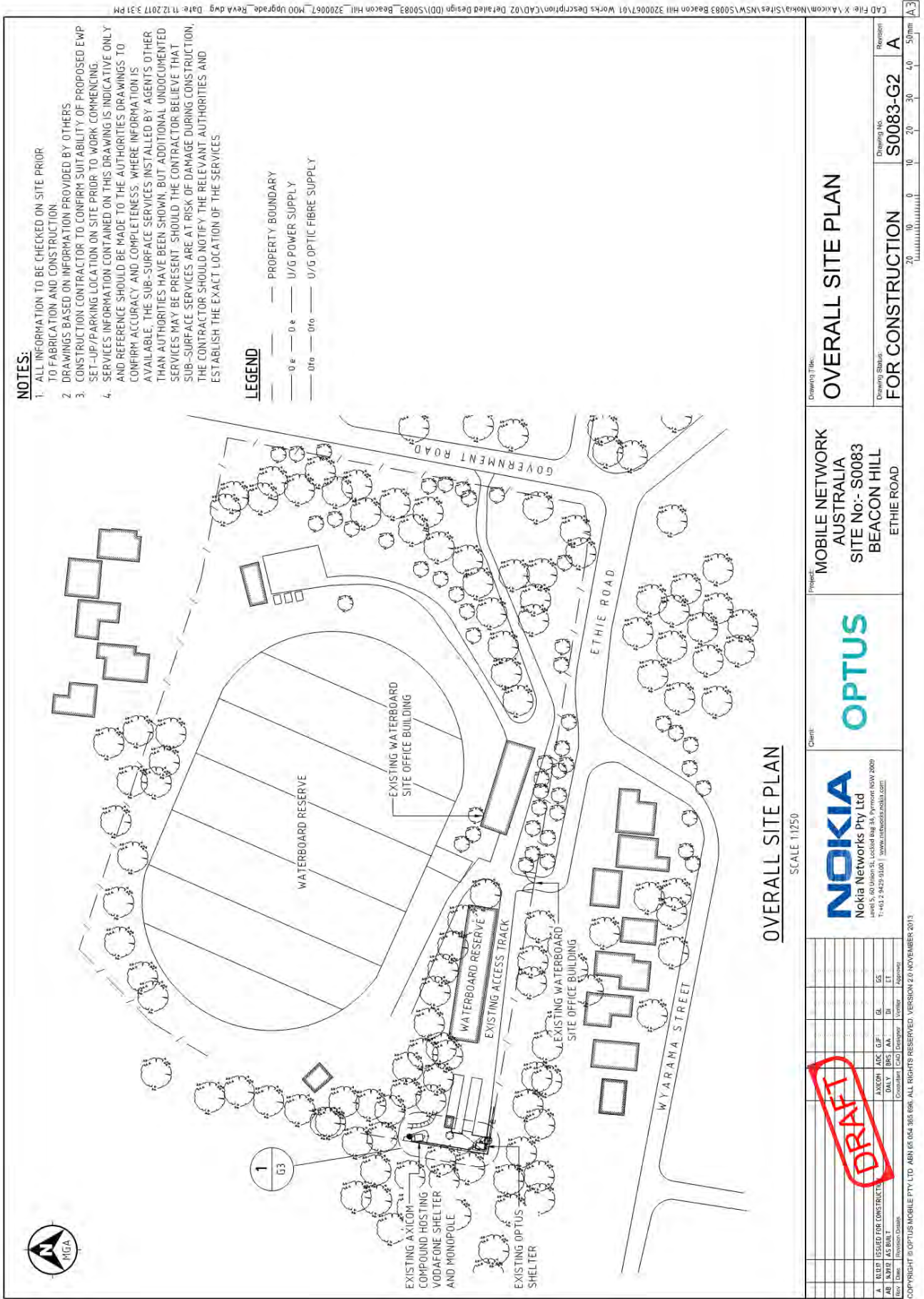
It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

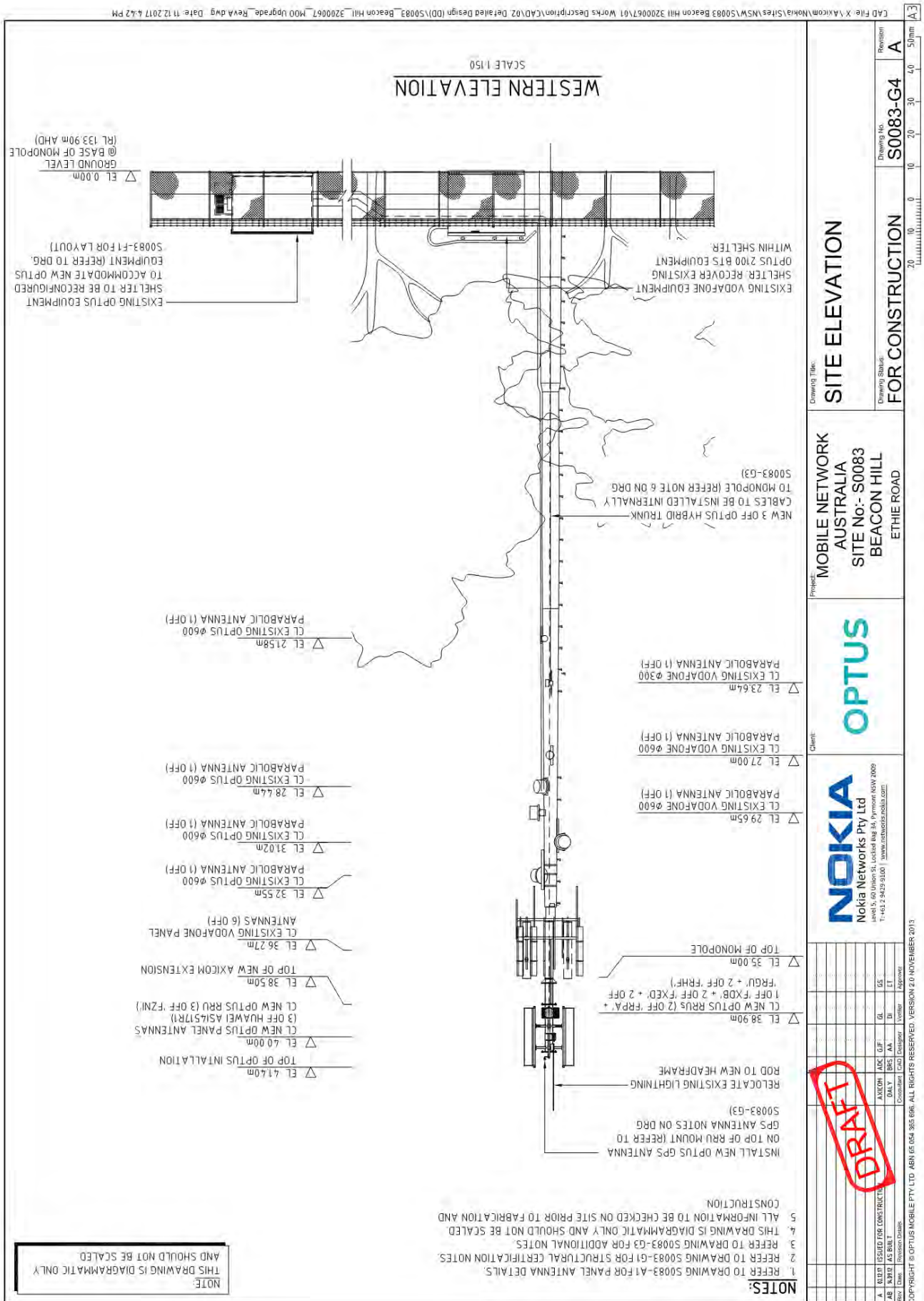
## RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2018/0395 for the Upgrade and extensions to an existing telecommunications facility (mobile phone base station) on land at Lease Plan Lot 3 DP 851446 Part Lot 54 DP 1175875,42 - 46 Government Road, BEACON HILL, for the reasons outlined as follows:

1. Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the Clause 115(3) of SEPP (Infrastructure) 2007 - (Guidelines) inconsistent with Principle 1 - Visual Impact.
2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the Objectives of the R2 – Low Density Residential zone under the Warringah Local Environmental Plan 2011.
4. Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the building height standard and is inconsistent with the Objectives of the Clause 4.3 Height of buildings under the Warringah Local Environmental Plan 2011.
5. Pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause D7 Views of the Warringah Development Control Plan 2011, in that is not consistent with the intention of retaining quality intact views, or at least further detract from those present views.
6. Pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan 2011, in that significantly disproportionate to existing urban environment within which it sits and does not demonstrate good design or innovation or improve the urban environment.
7. Pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause E7 Development on Land Adjoining Public Open Space of the Warringah Development Control Plan 2011, in that the height, materials and siting will be detrimental to the enjoyment of the open space and will negatively alter the visual aesthetic of Mills Reserve.
8. Pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development will have unacceptable impacts with regard to the natural and built environments in the locality.
9. Pursuant to Section 4.15 (1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.









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ANTENNA	OPTUS SECTOR 1 11-Q	OPTUS SECTOR 2 21-O	OPTUS SECTOR 3 31-O
STATUS	NEW#	NEW#	NEW#
EL CL ANTENNA	15° TN	110° TN	250° TN
COORDINATES (NOTE 2)	40.00m	40.00m	40.00m
MECHANICAL TILT (°)			
ELECTRICAL TILT (°)			
MAKE & MODEL	E 337 849	E 337 849	E 337 849
PORTS	4°	6°	4°
DIMENSIONS (H x W x D)	2600 x 548 x 150	2600 x 548 x 150	2600 x 548 x 150
PORT USER	1 & 2	1 & 2	1 & 2
FREQUENCY BANDS	700	700	700
COMBINER / DIPLEXER	NEW 1x700/900 + 2x1821/2326	NEW 1x700/900 + 2x1821/2326	NEW 1x700/900 + 2x1821/2326
RRU / RF MODULES	[NEW 2x(L7), 1x(U9), 2x(L16), 2x(U21) + 2x(L26)] ALL SHARED + NEW 1x(L23)	[NEW 2x(L7), 1x(U9), 2x(L16), 2x(U21) + 2x(L26)] ALL SHARED + NEW 1x(L23)	[NEW 2x(L7), 1x(U9), 2x(L16), 2x(U21) + 2x(L26)] ALL SHARED + NEW 1x(L23)
STATUS	NEW	NEW	NEW
TECHNOLOGIES	L7/U9/L18/U21/L23/L26	L7/U9/L18/U21/L23/L26	L7/U9/L18/U21/L23/L26
QUANTITY	1	1	1
MAKE & MODEL (SIZE)	HUBER + SUMNER MLEH HYBRID	HUBER + SUMNER MLEH HYBRID	HUBER + SUMNER MLEH HYBRID
NO. OF DC7 SWP PAIRS	9/18	9/18	9/18
ESTIMATED LENGTH	45m	45m	45m
OTHER	N/A	N/A	N/A

# REPLACES EXISTING CNMPX310R PANEL ANTENNAS

**ANTENNA LEGEND:**

EXISTING NEW, REPLACE, ETC FUTURE

**NOTES:**

1. THIS DRAWING SHALL BE READ IN CONJUNCTION WITH RF PLUMBING DIAGRAM DRAWING S0083-A2.

2. ANTENNA CO-ORDINATES ARE SPECIFIED FOR CENTRE OF STRUCTURE, TO THE NEAREST METRE.

3. ANCILLARIES REFER TO ITEMS AT OR NEAR THE ANTENNA.

4. TRUNK LENGTHS ARE ESTIMATED, ROUNDED UP TO THE NEXT 5m.

5. UNLESS NOTED AS EXISTING, ALL OTHER ANCILLARIES EQUIPMENT IS NEW.

6. ALL TAILS (84 OFF) TO BE FS/4-50, OR SIMILAR NO MORE THAN 5m IN LENGTH.

**OPTUS ANTENNA PLAN**

SCALE 1:50

ANCI	TH	QU	MANUFACTURER	TECHNOLOGY	DIMENSIONS	WEIGHT
RRU	NSN RRU	700	FRPA	700	560 x 447 x 133	20
		900	FX0B	900	560 x 447 x 133	25
		1800	FX0B	1800	560 x 447 x 133	25
		2100	FRGU	2100	560 x 447 x 133	25
		2300	F2N (RRH)	2300	450 x 350 x 160	17
		2600	FRNF	2600	560 x 447 x 133	25
		700/900	E11F13P25	700/900	253 x 165 x 103	5.5
		1821/2326	E15V9P43	1821/2326	200 x 210 x 120	4.5

**MOBILE NETWORK AUSTRALIA**

**SITE No:- S0083**

**BEACON HILL**

**ETHE ROAD**

**OPTUS**

**Nokia Networks Pty Ltd**

Level 5, 50 Union St, Sydney NSW 2009

T: +61 2 9429 9100 | www.networks.nokia.com

**NOKIA**

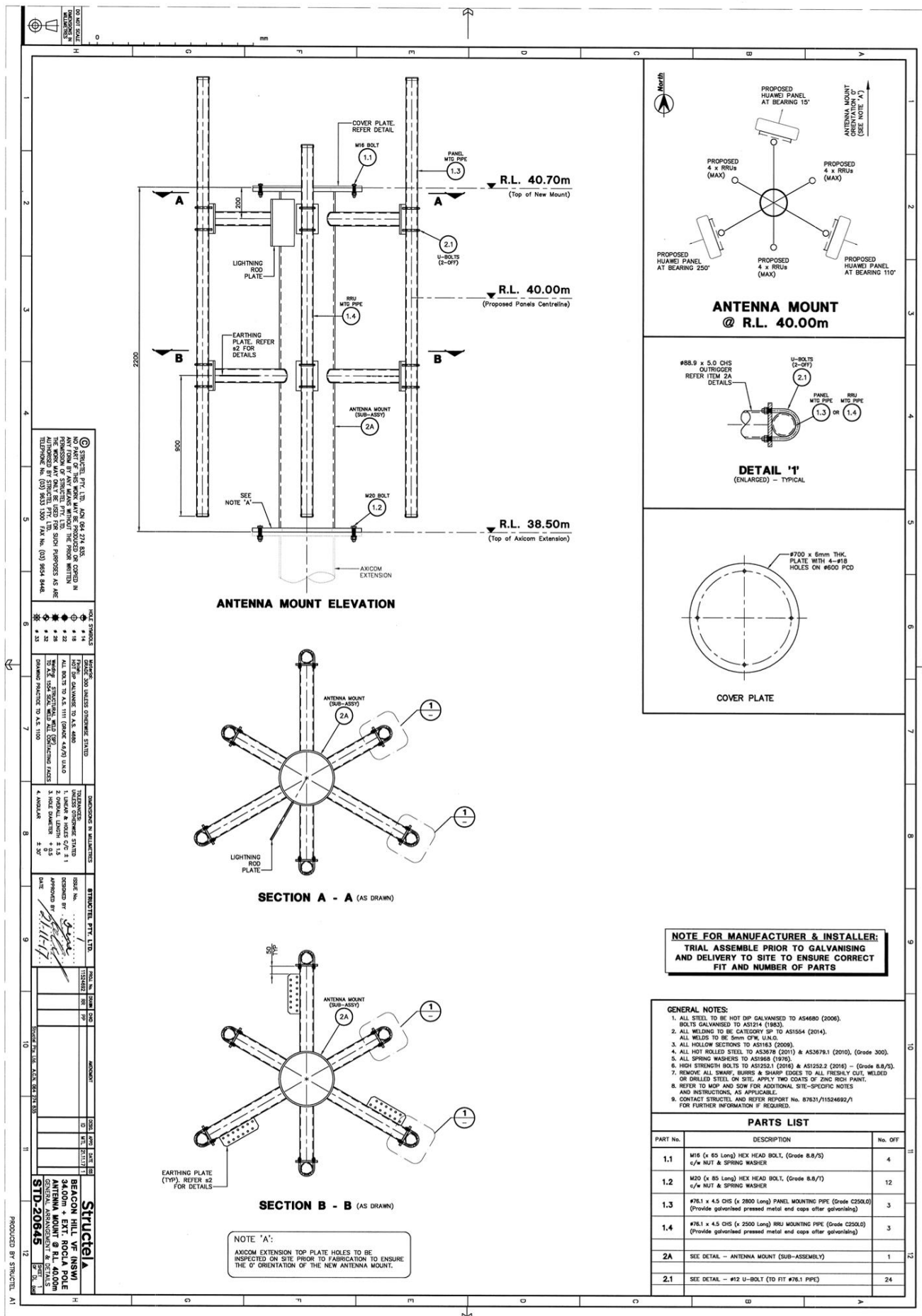
**OPTUS**

**PANEL ANTENNA SYSTEM CONFIGURATION**

**FOR CONSTRUCTION**

Drawing No: S0083-A1

Revision: A





<b>ITEM 3.3</b>	<b>MOD2018/0180 - 77 BOWER STREET, MANLY - MODIFICATION OF DEVELOPMENT CONSENT DA269/2015 GRANTED FOR CONSTRUCTION OF A DWELLING HOUSE.</b>
<b>REPORTING OFFICER</b>	<b>RODNEY PIGGOTT</b>
<b>TRIM FILE REF</b>	<b>2018/355888</b>
<b>ATTACHMENTS</b>	<b>1 <a href="#">↓</a> Assessment Report</b> <b>2 <a href="#">↓</a> Site Plan and Elevations</b>

### PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is a modification of a determination or decision made by a local planning panel.

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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. Mod2018/0180 for modification of development consent DA269/2015 granted for construction of a dwelling house at Lot 74 DP 8075, 77 Bower Street, Manly subject to the conditions and for the reasons set out in the Assessment Report.

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## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2018/0180
<b>Responsible Officer:</b>	Benjamin Price
<b>Land to be developed (Address):</b>	Lot 74 DP 8075, 77 Bower Street MANLY NSW 2095
<b>Proposed Development:</b>	Modification of Development Consent DA269/2015 granted for construction of a dwelling house.
<b>Zoning:</b>	Manly LEP2013 - Land zoned E3 Environmental Management
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Local Planning Panel
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Trustees Roman Catholic Church Archdiocese Sydney Cathal Halligan O'Rourke
<b>Applicant:</b>	Housed - Nanna Lesiuk
<b>Application lodged:</b>	09/04/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Single new detached dwelling
<b>Notified:</b>	11/04/2018 to 27/04/2018
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	3
<b>Recommendation:</b>	Approval

### ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;



- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

#### **SUMMARY OF ASSESSMENT ISSUES**

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
 Manly Development Control Plan - 3.4.2 Privacy and Security  
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping  
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

#### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 74 DP 8075 , 77 Bower Street MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the southern side of Bower Street Manly.</p> <p>The site is irregular in shape with a frontage of 16.4m along Bower Street and a depth of 45.875m. The site has a surveyed area of 698.8m<sup>2</sup>.</p> <p>The site is located within the E3 Environmental Management zone and is currently under construction for a dwelling house.</p> <p>The site slopes from south to north and includes a crossfall of 4.12m.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by two and three storey dwelling houses.</p>

Map:





#### SITE HISTORY

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

DA269/2015 - For demolition and construction of a new three (3) storey dwelling house, with double garage, internal lift, swimming pool and landscaping. This application was approved by the Manly Independent Assessment Panel on the 21 April 2016 subject to conditions. The following conditions are of relevance to this application:

##### "ANS01

*The Landscape Plan, submitted in conjunction with the approved Development Application and as amended by these conditions of consent, is to be amended to exclude the following species: Echium candicans, Yucca filamentosa. Alternative species chosen to replace these plants must be selected from the following list: Adiantum sp., Banksia spinulosa, Callistemon sp., Calochlaena sp., Caustis sp., Dianella sp., Gleichenia sp., Grevillea 'Robyn Gordon', Grevillea juniperina, Iso/epis sp., Juncus sp., Lomandra sp., tussocky native grasses (e.g. Kangaroo Grass), Westringia fruticosa, Xanthorrhoea sp. Plans are to be amended prior to the issue of the Construction Certificate.*

*Reason: To improve potential Long-nosed Bandicoot habitat at the site. reduce the risk of weed encroachment to surrounding areas, and/or to offset reductions in potential Bandicoot foraging habitat as a result of the development.*

##### ANS03

*The viewing platform on top of the cabana is to be deleted by removal of access from the kitchen (Level 01) and replacement of the platform with a nontrafficable roof. With the exception of a 900mm wide "folly" which may be provided on the top of the cabana. Plans are to be amended accordingly, prior to the issue of any Construction Certificate.*

*Reason: To ensure privacy to No. 75 Bower St, Manly.*

##### ANS04

*The existing tree near the western boundary, adjacent to the proposed terrace to Level 01, is to be*





*retained and protected during all stages of construction. Plans are to be suitably amended, prior to the issue of any Construction Certificate.*

*Reason: To preserve privacy between No. 77 and No.81 Bower St.*

ANS05

*A landscaped buffer is to be provided along the western boundary. Plans are to be suitably amended, prior to the issue of any Construction Certificate.*

*Reason: To protect the privacy of No.81 Bower St and reduce the visual impact of the development."*

## PROPOSED DEVELOPMENT IN DETAIL

The proposed modifications that are identified in red on the plans and have been completed on-site include:

### Level 00 Entry

- Swimming pool adjusted to remove the full surround coping. The pool alignment with masonry entry wall 3790mm from the western boundary (adjusted from 4690mm)
- Internal stair adjusted to accommodate the adjusted floor level rl 25.5 to rl 26
- Service area reconfigured to allow for a light well void
- Gym reconfigured
- minor adjustments to internal bathroom

### Level 01 Living Plan

- Powder room relocated.
- Bathroom relocated
- Floor level adjusted from RL 25.5 TO RL 26.0
- Laundry/cellar reconfigure
- Adjustment to stair shape and provision of an entry platform

### Level 02 Bedrooms Plan

- Main bed ensuite reconfigured

### Roof

- Roof overhang deleted - parapet to street front
- Delete lift overrun

The proposed modifications that are identified in red on the plans and have not been completed on-site include:

The removal of the tree adjacent to the western boundary and deletion to consent condition ANS04 which is as follows:

*"The existing tree near the western boundary, adjacent to the proposed terrace to Level 01, is to be retained and protected during all stages of construction. Plans are to be suitably amended, prior to issue of any Construction Certificate.*

*Reason: To preserve privacy between No.77 and No.81 Bower st."*



The modifications that have been completed/are being completed on-site that are shown on the plans but not identified in red include:

- External stairs on western boundary
- Balustrade and access stairs to the roof of the cabana.

The application was amended to a S4.55(2) on the 16 May 2018.

Amended plans were received on the 17 May 2015 deleting the access from the kitchen to the roof of the cabana. The plans differ in only minor respects and the development would not result in greater environmental impact. As such re-notification was not necessary.

It is also noted that landscape works have been completed that are not in accordance with the approved landscape plan. These works were not applied for or shown on the plans submitted with this application. As such they will be referred to compliance for investigation.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

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

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA269/2015, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

<b>Section 4.55 (2) - Other Modifications</b>	<b>Comments</b>
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	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under



Section 4.55 (2) - Other Modifications	Comments
originally granted was modified (if at all), and	DA269/2015.
(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	Development Application DA269/2015 did not require concurrence from the relevant Minister, public authority or approval body.
(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 under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environmental Plan 2011 and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

#### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.





Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This Clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p><b>(i) Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p><b>(ii) Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>





Section 4.15 'Matters for Consideration'	Comments
	(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Public Exhibition" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
MHD Planning	4 Roselands Avenue FRENCHS FOREST NSW 2086
Turnbull Planning International Pty Ltd	2301/4 Daydream Street WARRIEWOOD NSW 2102
Mr Jason Halliwell	81 Bower Street MANLY NSW 2095

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

- Viewing Platform
- Clear glass on window DW02.08
- Retrospective approval
- Works as executed plan
- Should be considered as a S4.55(2)
- Swimming Pool
- Landscaping - removal of tree and deletion of condition ANS04 - objection to Landscape condition, should be replaced if the tree fails
- Insufficient Information - Landscape plan and window changes
- Floor Space Ratio
- Staircase - not adequately notated and privacy impact
- Inadequacy of western buffer planting

The matters raised within the submissions are addressed as follows:



- Viewing Platform  
Comment:  
The viewing platform was assessed under Clause 3.4.2 of the Manly DCP 2013. In summary it is recommended the condition be amended to ensure the development achieves the intention of the condition.
- Clear glass on window DW02.08  
Comment:  
This window is subject to and will remain subject to ANS07 requiring the window be made opaque.
- Retrospective approval  
Comment:  
The findings from Talbot in Windy Dropdown v Warringah Council allows for retrospective approval.
- Works as executed plan  
Comment:  
The plans provide sufficient information to determine this application. Works as executed plans are not required.
- Should be considered as a S4.55(2)  
Comment:  
The application was amended to a S4.55(2) on the 16 May 2018.
- Swimming Pool  
Comment:  
The modifications to the swimming pool have been assessed in accordance with the objectives of Clause 4.1.9 Swimming Pools, Spas and Water Features. In summary the proposed modifications will not result in unreasonable impacts on the neighbouring properties.
- Landscaping - removal of tree and deletion of condition ANS04 - objection to Landscape condition, should be replaced if the tree fails Landscape Plan  
Comment:  
Councils Landscape officer is satisfied that the tree is not viable and is of little retention value. The recommended condition will ensure the intention of the condition is achieved.
- Insufficient Information - Landscape plan and window changes  
Comment:  
The modifications do not make it essential to have a landscape plan. There is sufficient information to detail the windows.
- Floor Space Ratio  
Comment:  
The change to the floor space ratio is due to the re-arrangement of the services on the entry plan and will not alter the built form of the development. The proposal has been assessed in accordance with Clause 4.6 and was found to be satisfactory.
- Staircase - not adequately notated and privacy impact  
Comment:



The staircase is adequately shown on the site plan and the statement of environmental effects. The staircase was assessed under Clause 3.4.2 Privacy and Security of the Manly DCP 2013 and was found to be satisfactory.

- Inadequacy of western buffer planting  
Comment  
Compliance is currently investigating this matter.

## MEDIATION

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

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	The modification to the landscape is acceptable, subject to tree replacement as proposed by modification application. However it should be noted that the original condition of the retention of the existing tree (Pear Tree) has not been adhered to with more than 10% of its canopy being removed, and in its current condition this tree will most likely fail.
NECC (Bushland and Biodiversity)	The subject site is located within the declared population area for the endangered population of Long-nosed Bandicoots at North Head. While the proposed modification will result in the removal of an additional 20m <sup>2</sup> bandicoot habitat, the submitted Terrestrial Biodiversity Report (GIS Environmental Consultants, 2 February 2018) recommends updated ameliorative conditions to reduce additional effects on the endangered population. A Landscape Plan incorporating plantings to achieve higher quality bandicoot habitat on the site is also required as a condition of consent in order to offset the additional loss of habitat. The Bushland & Biodiversity Team raise no further objections to the proposed modification, subject to implementation of recommended conditions in Section 7 ("Updated Ameliorative Conditions") of the updated Terrestrial Biodiversity Report and those recommended by the Natural Environment Officer.  It is noted that unapproved landscaping works appear to have commenced in the Council road reserve adjoining the northern property boundary. Compliance have been notified to investigate.
NECC (Coast and Catchments)	This assessment constitutes the assessment for MOD2018/0180, relating specifically to the coastal management requirements.  This assessment is based on a review of submitted documentation for MOD2018/0180 and the assumption that all documented structures and procedures are applied and recommendations followed.  It is recommended that this modification be approved with conditions.





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

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

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

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

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

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

##### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 675020S\_03 dated 26 May 2018).

##### Manly Local Environmental Plan 2013

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

##### Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	No proposed change	N/A	As approved
Floor Space Ratio	FSR: 0.45:1 (314.5sqm)	FSR: 0.63:1 (444.2sqm) as measured from approved plans	FSR: 0.68:1 (475.57sqm)	51.2%	No

##### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes





Clause	Compliance with Requirements
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes

#### Detailed Assessment

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

The following assessment of the variation to Clause 4.4 - Floor Space Ratio development standard has taken into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement:	0.45:1 (314.5sqm)
Approved	FSR: 0.63:1 (444.2sqm) as measured from approved plans
Proposed:	FSR: 0.68:1 (475.57sqm)
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	51.2%

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

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

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

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

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor Space Ratio' of the MLEP 2013 are:

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

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

#### Comment:

The increase to the floor space ratio is due to the re-configuration of the entry area. This area



was previously identified as basement services which is not included in the gross floor area. The proposal modifies this area to a gym, which is included in the gross floor area. The proposal will retain the built form of the approved development on the site and will not result in any change that will alter the approved bulk and scale of the development as viewed from the streetscape.

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

Comment:

The proposal will result in a building density and bulk that is generally consistent with that approved. The proposed modifications will not obscure any important landscape features 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 will retain the approved form of the development, its relationship between new development and the existing character and landscape of the area.

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

Comment:

The proposed modifications will not result in any unreasonable environmental impacts on the use or enjoyment of the 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.*

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 E3 Environmental Management zone.

The underlying objectives of the E3 Environmental Management zone

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

Comment:

The proposed modifications will not result in any unreasonable impacts on the areas ecological, scientific, cultural or aesthetic values.



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

Comment:

The proposed modifications are within the range of development that will not have an adverse effect on the above mentioned values.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

Comment:

The proposal subject to the conditions of consent will maintain tree canopies and will not result in any unreasonable impact on the scenic qualities of the foreshore.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation*

Comment:

The proposed modifications will not negatively impact on nearby foreshores, significant geological features and bushland.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment:

The proposal is not located within the immediate vicinity of the foreshore. Storm water disposal was appropriately conditioned in the original consent conditions

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment:

The proposed modifications will not result in a change to the height or the bulk of the building.

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

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

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

Comment:

The proposal is for reconfiguration of the existing floor area and will not result in any significant change to the built form. The requested degree of flexibility is satisfactory in this circumstance.





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

Comment:

The proposed modifications will retain the existing built form and will not result in any unreasonable impacts in the locality. The proposal is satisfactory in this circumstance.

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

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

Comment:

This application has been made under S4.55(2) of the Act. This is a standalone provision and does not rely upon clause 4.6 to vary development standards. As such no application in accordance with Clause 4.6 was required to be submitted. However, it is considered that the proposals consistency with the objectives of the development standard and objectives of zone E3 Environmental Management are sufficient to justify that compliance is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify the contravention.

(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:

Not applicable. However, as discussed above there is sufficient evidence to demonstrate 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 E3 Environmental Management zone in the MLEP 2013.

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

Comment:  
Not applicable.

### Manly Development Control Plan

#### Built Form Controls

Built Form Controls - Site Area: 698.8	Requirement	Approved	Proposed	Complies
4.1.2.3 Roof Height	Parapet Height: 0.6m	garage nil	garage 0.2m	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (384.34sqm)	45.9% (321.2sqm) as measured from approved plans	48% (336.3sqm)	No
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (117.7sqm)	64%(206sqm)	59% (198.6sqm)	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	3m	3m	No proposed change
	<b>Side setback Coping/concourse</b> Eastern side 1m Western side (equal to height above ground) 1.8m	East side 1.5m West side 3.3m	East side 1.5m West side 3.4m	No further non-compliance
	<b>Side Setback Waters Edge</b> Eastern side 1.5m Western side (equal to height above ground) 1.8m	East 6.7m West 4.5m	East 7.8m West 3.7m	
	Front Setback Equal to 2 x height above ground	0.28m	0.28m	

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

#### Detailed Assessment

#### **3.4.2 Privacy and Security**

##### Merit consideration:

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

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

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

##### Comment:

The application does not specifically propose any modification to the viewing platform. The original application included the following condition:

"ANS03

*The viewing platform on top of the cabana is to be deleted by removal of access from the kitchen (Level 01) and replacement of the platform with a non-trafficable roof. With the exception of a 900mm wide "folly" which may be provided on the top of the cabana. Plans are to be amended accordingly, prior to the issue of any Construction Certificate.*

*Reason: To ensure privacy to No. 75 Bower St, Manly."*

The proposed plans indicate a balustrade and steps to the viewing platform. Upon site inspection it was evident the roof was trafficable and was intended to remain trafficable. The intention of the condition was clearly articulated in the assessment report as follows:

*"A condition will be included deleting the viewing platform from the proposal."*

It is clear that the development does not comply with this condition or the intention of this condition. It is noted that the steps from the pool level to the platform were not specifically deleted in the above condition. However, there is not a reasonable purpose for permanent steps to a non-trafficable roof



form except for the use of this structure as a viewing platform. This use will lead to an unreasonable impact on the privacy of the neighbouring property. As such it is recommended the condition be amended to read as follows:

**ANS03**

*The viewing platform on top of the cabana is to be deleted by removal of all access and replacement of the platform with a non-trafficable roof. Plans are to be amended accordingly, prior to the issue of any Construction Certificate.*

*Reason: To ensure privacy to No. 75 Bower St, Manly.*

The recommended condition will ensure the development achieves the intention of the condition ANS03.

The window DW02.08 is identified in the doors and window schedule as clear glass. This application will be subject to the original condition of consent ANS07 which requires the window to be opaque. A site inspection on the 28 May 2018 confirmed an opaque film had been applied to the window.

Councils Landscape Officer assessed the health of the pear tree on the site and determined that it was no longer viable for retention. The officer recommended a condition to ensure the tree be replaced with an appropriate species. The condition has been included in this recommendation. The proposal subject to the recommended condition will achieve the intention of the condition on the original consent.

The proposed stair on the western boundary is for access purposes only and will not result in any unreasonable impacts on the privacy of the neighboring property. It is recommended condition ANS05 be amended to allow for the stair.

The entry platform is adequately setback from the side boundary and the side boundary wall will ensure no unreasonable overlooking. Furthermore the landscaping on the western boundary will limit views to the private open space of the neighbouring property.

The proposed amendment to the swimming pool will not result in any unreasonable impacts on the privacy of the neighbouring properties.

The proposed amendments, subject to the conditions of consent, will not result in any unreasonable impacts on the privacy of the neighbouring properties.

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

Comment:

The proposal subject to the condition of consent will achieve an adequate level of privacy within the locality. The proposal will achieve a balanced outlook from habitable rooms and private open spaces.

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

Comment:

The proposal will maintain the approved buildings passive surveillance of the streetscape.

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





proposal is supported, in this particular circumstance.

#### 4.1.5 Open Space and Landscaping

##### Description of non-compliance

The proposal will result in an increase to the total open space from the approved situation but will remain non-compliant.

##### Merit consideration:

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

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

##### Comment:

The proposal subject to the condition of consent will augment the landscape features and native flora on the site.

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

##### Comment:

The proposal will increase the total open space on the site and reduce the soft landscaped area on the site. The landscape plan was not proposed to be amended in this application and will retain the soft landscaped area. The proposal maximises the soft landscaped area and will remain compliant with the control. The proposal subject to the conditions of consent is consistent with this objective.

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

##### Comment:

The proposal subject to the conditions of consent will ensure no unreasonable impacts on the amenity of the site streetscape or surrounding area.

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

##### Comment:

The proposal will maintain adequate stormwater management.

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

##### Comment:

The proposal will not result in the spread of weeds.





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

Comment:

The proposal subject to conditions will provide adequate wildlife habitat, subject to conditions.

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

#### **4.1.9 Swimming Pools, Spas and Water Features**

Description of non-compliance

The proposal will maintain the the non-compliance with the swimming pool front setback controls of the Manly DCP 2013 .

Merit consideration:

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

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

Comment:

The proposal is adequately designed and located to ensure no unreasonable impact on visual or acoustic privacy of the neighbouring properties.

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

Comment:

The proposed modifications will not result in any unreasonable impact on the streetscape or established character of the locality.

Objective 3) To integrate landscaping; and

Comment:

The approved landscaping will ensure landscaping is integrated into the design

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

Comment

Not applicable

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**



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

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

#### **POLICY CONTROLS**

##### **Manly Section 94 Development Contributions Plan**

S94 Contributions are not applicable to this application.

#### **CONCLUSION**

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

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

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

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

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

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

#### **RECOMMENDATION**

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0180 for Modification of Development Consent DA269/2015 granted for construction of a dwelling house: on land at Lot 74 DP 8075,77 Bower Street, MANLY, subject to the conditions printed below:



**A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:**

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
01 Site/Roof Plan	1/08/2017	Housed
02 Level 00 Entry Plan	1/08/2017	Housed
03 Level 01 Living Plan	30/01/2018	Housed
04 Level 02 Bedrooms Plan	30/01/2018	Housed
05 Elevation North and East	30/01/2018	Housed
06 Elevation South and West	30/01/2018	Housed
07 Section 01 and 02	30/01/2018	Housed
08 Section 03	30/01/2018	Housed
Door and Window Schedule - Schedule of BASIX Commitments	30/01/2018	Housed

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate 675020S_03	26 May 2018	GRS Building Reports

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

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

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

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

**B. Modify Condition ANS01 to read as follows:**

The approved Landscape Plans submitted in support of approved DA0269/2015 are to be amended prior to the issue of the Construction Certificate to include the following elements:

1. A planting schedule including stratum, species/common names, species quantities, pot sizes and staking details;
2. Planting of at least one (1) Banksia integrifolia specimen in a minimum 200L container located in the same location of the ornamental pear to be removed;
3. At least 60% of species listed in the planting schedule are to be selected from the Native Gardening Booklet as provided on Council's website:  
<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/native-gardening/pittwaternativegardeningbooklet.pdf>





4. The proposed finished treatment of garden areas, including soil depth and retaining walls and the location of underground services.

Each plan/sheet is to be certified by a qualified landscape architect, confirming that the plans/details for the works to be carried out will achieve the relevant conditions of the development consent of this modification and approved DA0269/2015. The Landscape Plan is to detail works on the subject property only. Landscaping works outside the property boundary are not permitted.

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

Reason: To offset the loss of additional endangered Long-nosed Bandicoot habitat as a result of the development and maintain appropriate landscaping on the site.

**C. Modify Condition ANS03 to read as follows:**

The viewing platform on top of the cabana is to be deleted by removal of all access and replacement of the platform with a non-trafficable roof form. Plans are to be amended accordingly, prior to the issue of any Construction Certificate.

Reason: To ensure privacy to No. 75 Bower St, Manly.

**C. Modify Condition ANS04 to read as follows:**

One (1) Banksia integrifolia is to be planted in the same location as the pear tree (identified as 7 on the approved plans), and planted at min 200 litres. This tree shall be maintained for the life of the development.

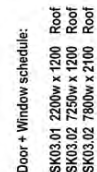
Reason: This is to ensure the landscaping is completed in accordance with the intent of the DA 0269/2015

**D. Modify Condition ANS05 to read as follows:**

A landscaped buffer is to be provided along the western boundary, with the exception of the external western stairs shown on 03 Level 01 Living Plan dated 30/01/2018 and prepared by Housed. Plans are to be suitably amended, prior to the issue of any Construction Certificate.

Reason: To protect the privacy of No.81 Bower St and reduce the visual impact of the development.



[illegible]

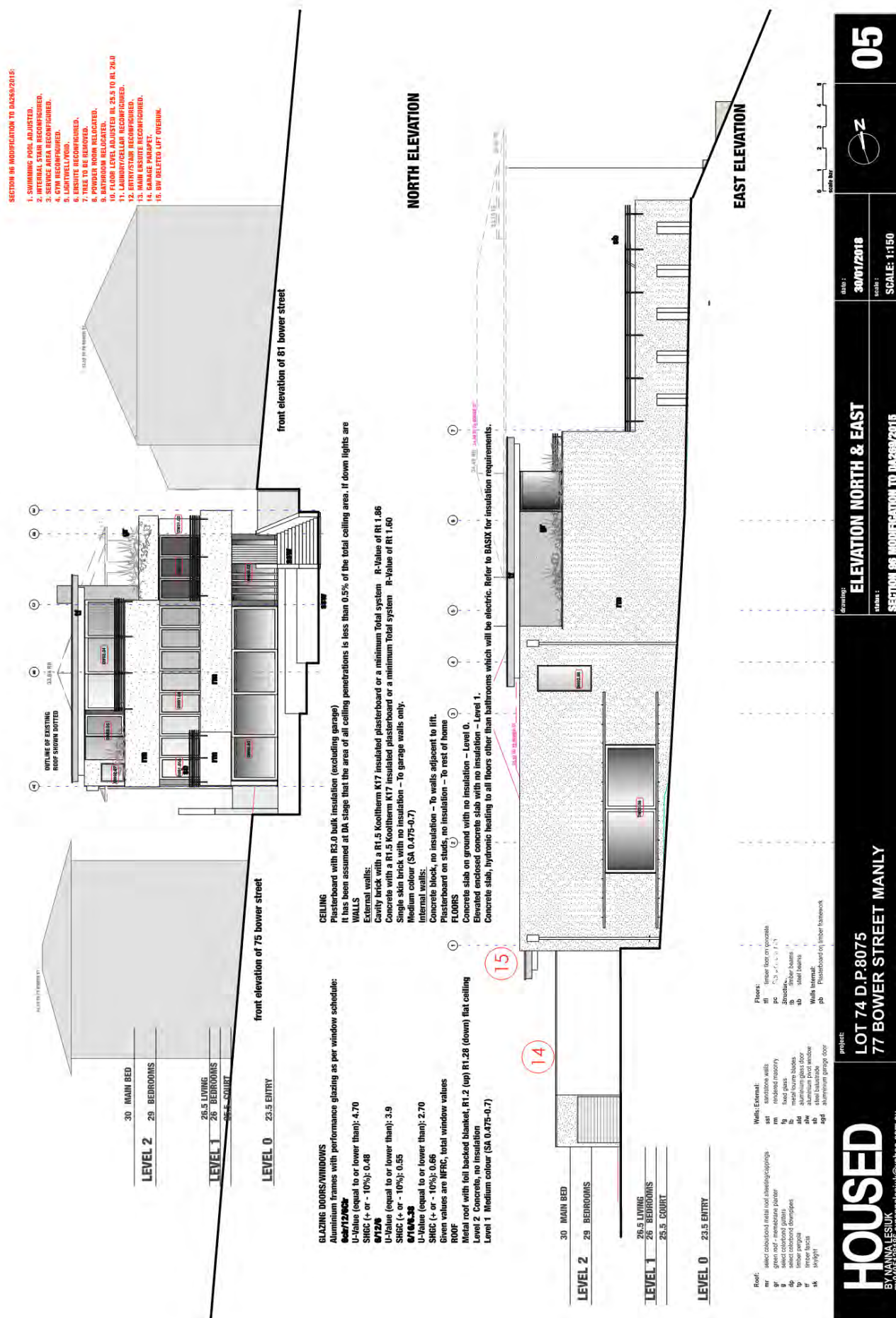
# HOUSED

LOT 74 D.P.8075  
777 BOWER STREET MANLY

drawing:  
**SITE / ROOF PLAN**  
 status :  
 SECTION 86 MODIFICATION TO DA-282/2016

date : 01/08/2017  
scale : 1:200

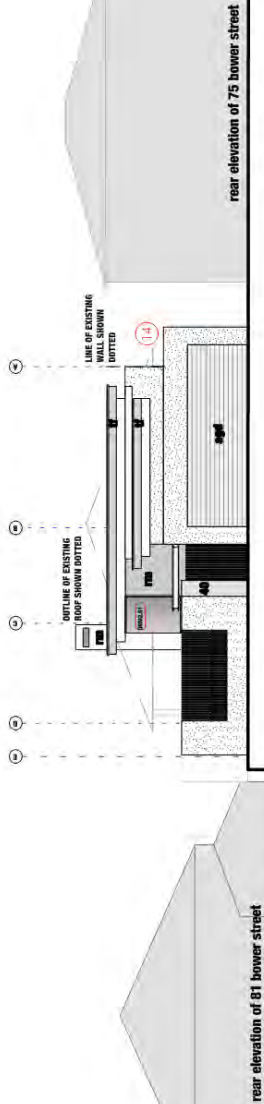
01





SECTION 96 MODIFICATION TO DA268/2015:

1. SWIMMING POOL ADJUSTED.
2. INTERNAL STAIR RECONFIGURED.
3. SERVICE AREA RECONFIGURED.
4. DPM RECONFIGURED.
5. ENTRY RECONFIGURED.
6. BRISITE RECONFIGURED.
7. TREE TO BE REMOVED.
8. POWDER ROOM RELOCATED.
9. BATHROOM RELOCATED.
10. LAUNDRY/STAIR RELOCATED TO R1.26 TO R1.26.4
11. LAUNDRY/STAIR RELOCATED.
12. ENTRY/STAIR RECONFIGURED.
13. MAIN BRISITE RECONFIGURED.
14. GARAGE PARAPET.
15. DW BUILT UP OVERHILL.



30 MAIN BED  
29 BEDROOMS

26.5 LIVING  
26 BEDROOMS

23.5 COURT

LEVEL 2

LEVEL 1

LEVEL 0

GLAZING DOORS/WINDOWS  
Aluminium frames with performance glazing as per window schedule:

600/1200  
U-Value (equal to or lower than): 4.70  
SHGC (+ or - 10%): 0.48

600/1200  
U-Value (equal to or lower than): 3.9  
SHGC (+ or - 10%): 0.55

600/1200  
U-Value (equal to or lower than): 2.70  
SHGC (+ or - 10%): 0.66

600/1200  
U-Value (equal to or lower than): 2.70  
SHGC (+ or - 10%): 0.66

600/1200  
U-Value (equal to or lower than): 2.70  
SHGC (+ or - 10%): 0.66

600/1200  
U-Value (equal to or lower than): 2.70  
SHGC (+ or - 10%): 0.66

600/1200  
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ITEM 3.4	DA2017/1063 - 876 PITTWATER ROAD, DEE WHY - DEMOLITION WORKS AND CONSTRUCTION OF A SHOP TOP HOUSING DEVELOPMENT
REPORTING OFFICER	RODNEY PIGGOTT
TRIM FILE REF	2018/353098
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 it is the subject of 10 or more unique submissions by way of objection.

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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. DA2017/1063 for demolition works and construction of a shop top housing development at Lots 2-4 DP 9900, 876 Pittwater Road, Dee Why subject to the conditions and for the reasons set out in the Assessment Report.

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## DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2017/1063
Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot 3 DP 9900, 876 Pittwater Road DEE WHY NSW 2099 Lot 4 DP 9900, 876 Pittwater Road DEE WHY NSW 2099 Lot 2 DP 9900, 876 Pittwater Road DEE WHY NSW 2099
Proposed Development:	Demolition works and construction of a shop top housing development
Zoning:	Warringah LEP2011 - Land zoned B4 Mixed Use Warringah LEP2011 - Land zoned B4 Mixed Use Warringah LEP2011 - Land zoned B4 Mixed Use
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Local Planning Panel
Land and Environment Court Action:	No
Owner:	Michael Russo Carmel Russo Francesco Russo Pasqualina Russo Katia Caravella Linda Scott-Mackenzie
Applicant:	Crawford Architects Pty Ltd
Application lodged:	30/10/2017
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Mixed
Notified:	10/11/2017 to 13/12/2017
Advertised:	11/11/2017
Submissions Received:	12
Recommendation:	Approval
Estimated Cost of Works:	\$ 13,000,000.00

### ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act



1979, and the associated regulations;

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

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
Warringah Development Control Plan - C3 Parking Facilities  
Warringah Development Control Plan - D3 Noise  
Warringah Development Control Plan - D6 Access to Sunlight  
Warringah Development Control Plan - D7 Views  
Warringah Development Control Plan - D10 Building Colours and Materials  
Warringah Development Control Plan - Area 7 Pittwater Road

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 3 DP 9900 , 876 Pittwater Road DEE WHY NSW 2099 Lot 4 DP 9900 , 876 Pittwater Road DEE WHY NSW 2099 Lot 2 DP 9900 , 876 Pittwater Road DEE WHY NSW 2099
<b>Detailed Site Description:</b>	<p>876 Pittwater Road, Dee Why (the subject site) is three allotments known as the same address located in the Dee Why Town Centre. The land is legally identified as Lots 2, 3 and 4 in DP9900.</p> <p>The allotment is irregular in shape and has two street frontages, but is bound by No. 874 Pittwater Road the the south-west which is the corner allotment between Pittwater Road and Oaks Avenue, as shown on the below image. 874 Pittwater Road does not form part of the development site.</p> <p>The subject site has a total area of 1,060m<sup>2</sup> comprising of a 20m frontage to Pittwater Road, a 24m frontage to Oaks Avenue and depths of 30m and 38m respectively.</p> <p>Presently the site accommodates a dated two storey commercial building which covers the majority of the site area. Vehicular access is obtained from Oaks Avenue down the eastern edge of the site into an informal parking area which abuts the adjoining site to the north and east.</p> <p>The site has no vegetation present and no evident topographical features.</p>



#### **SURROUNDING DEVELOPMENT**

To the south-west of the development site is Lot 1 of DP9900, known as 874 Pittwater Road. This site accommodates a dated two storey commercial building on a corner allotment fronting both Pittwater Road and Oaks Avenue.

Due north of the site is 880 Pittwater Road which accommodates a multi-storey shop top housing development which achieves a height approximately 15m taller than the existing development on the subject site.

Due east of the site is 10 Oaks Avenue which accommodates a multi-storey shop top housing development. This development is irregular in that it hasn't built to the edges of the site for the height of the development, rather the floors progressively step in from the eastern and western edges.

More broadly, the subject development site is within the same street block as the Meriton development in the centre of Dee Why Town Centre that is presently under construction and will attain a height of 17 storeys.

Map:



#### **SITE HISTORY**

The building present on the site was constructed between 1950 and 1970 and has continuously been used for commercial operations. Numerous tenants and occupants have owned and operated within the building since this time.

Recent applications for the same site include:

DA2017/1063

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#### **Development Application No. DA2015/1202**

An application was lodged with Council for the construction of a shop top housing development with basement car parking in late 2015. Council's preliminary assessment of the application found many non-compliances with the built form of the development that resulted in Council being unable to support the application.

Following correspondence with Council, the applicant voluntarily withdrew the development application on 10 April 2016.

#### **Pre-Lodgement Meeting No. PLM2017/0087**

A meeting between the applicant and Council was held on 22 August 2017 to discuss a preliminary proposal for the site. The proposal was for the construction of a multi-storey mixed use development (shop top housing) with 5 retail spaces, 48 apartments and 85 carparking spaces.

An assessment of the PLM scheme concluded that the proposal could be acceptable, subject to exploring options for site amalgamation with No. 874 Pittwater Road, the deletion of a roof-top tennis court, an overall reduction in the number of units on each floor to increase the amenity for occupants and a redesign of the basement car park and bin storage.

The application put forth to Council in this current assessment reflects the original scheme proposed in PLM2017/0087, subject to modifications as recommended.

#### **PROPOSED DEVELOPMENT IN DETAIL**

The development application seeks consent for demolition works and the construction of a shop top housing development.

The building proposed is a 7 storey tower with 4 levels of podium (included in the tower calculation) and has 4 levels of basement car park. The building will accommodate 79 car parking spaces below ground, 5 retail premises at grade and 45 apartments on the levels above. The application also includes extensive public domain works and landscaping works in the road reserve, at level 1 and at the podium level.

In detail the application seeks consent for:

#### **DEMOLITION WORKS**

The application seeks to demolish all existing structures on the site and undertake any necessary remediation works to the land.

#### **EXCAVATION WORKS**

Consent is sought for excavation works of approximately ~15m for the purposes of constructing a four storey basement carpark for the entire site area. The basement carpark accommodates 62 residential spaces and 17 retail spaces as well as storage cages, lobbies, fire stairs and motorcycle parking spaces.

#### **GROUND LEVEL (FFL RL18.700 - 19.300)**

The ground level of the building has a dual street frontage to Pittwater Road and Oaks Avenue. The level accommodates:

- Five retail premises of between 24.4m<sup>2</sup> and 68.4m<sup>2</sup>;
- Retail storage, waste storage and lavatory facilities;
- Residential access from Oaks Avenue;
- Vehicular access to the basement carpark from Oaks Avenue on the easternmost edge of the





site

#### **LEVEL 1 (FFL RL23.500)**

- Three 2-bedroom apartments;
- Five 1-bedroom apartments
- 180m<sup>2</sup> communal courtyard and landscaping with pergolas and BBQ facilities

#### **LEVEL 2 AND LEVEL 3 (FFL RL26.600 AND 29.700)**

- Three 2-bedroom apartments;
- Five 1-bedroom apartments

#### **LEVEL 4, 5 AND 6 (FFL RL32.800, 35.900 AND 39.000)**

- Two 2-bedroom apartments;
- Five 1-bedroom apartments

Herein these works are described as the 'development'.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

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

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

<b>Section 4.15 Matters for Consideration'</b>	<b>Comments</b>
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.



Section 4.15 Matters for Consideration	Comments
	<p>Clause 50(1A) of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p>Clauses 54 and 109 of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report. In summary it is not found that the development would have any detrimental nor adverse impact upon the ecology of the area, largely due to the site having already been developed, and the scale of surrounding developments.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. The proposal will allow for additional retail and residential uses within the growing Dee Why area and will contribute to enhancing the social aspect and relations of the community.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use. The land is being developed in a way that is envisioned by the current planning controls and the greater Dee Why Master Plan.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance	See discussion on “Notification & Submissions Received” in this report.



Section 4.15 Matters for Consideration <sup>1</sup>	Comments
with the EPA Act or EPA Regs	
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 12 submission/s from:

Name:	Address:
Miss Kathryn Renee Young	8 / 10 Oaks Avenue DEE WHY NSW 2099
Ms Dana Boudaghian	38 / 880 Pittwater Road DEE WHY NSW 2099
Samuel John Williams	2 / 10 Oaks Avenue DEE WHY NSW 2099
George Crowley	51 Parkland Road MONA VALE NSW 2103
Mr James Oliver Jones Powell	3 / 10 Oaks Avenue DEE WHY NSW 2099
Mr William Antonius Choeng	5 / 10 Oaks Avenue DEE WHY NSW 2099
Gengxi Xu	21 / 10 Oaks Avenue DEE WHY NSW 2099
Gavro Lakic	25 / 10 Oaks Avenue DEE WHY NSW 2099
Mr Noel Raymond Patrick Kelly	11 / 10 Oaks Avenue DEE WHY NSW 2099
Mr Gregory Neil O'Donohue	11 / 2 Carlton Street FRESHWATER NSW 2096
Barry Ian Robertson	22 / 10 Oaks Avenue DEE WHY NSW 2099
Richard William Michell	11 Vale Avenue DEE WHY NSW 2099

The submissions received raise the following concerns:

- 1. Construction activities
- 2. Traffic
- 3. Overshadowing
- 4. Construction damages
- 5. Asbestos
- 6. Dampness caused by planters
- 7. Property value
- 8. Land use

The matters raised in the submissions received are addressed as follows:





### 1. Construction Activities

Several submissions received objected to the development on the basis of the inconvenience that the excavation and construction period would cause including noise, dust, traffic and the like. Several submissions also claim that this development should not be allowed to proceed on the basis of providing the residents a period of respite between the nearby Meriton development and this subject development.

Comment: It must be a realistic expectation that the land would be developed in accordance with the current planning controls and in a similar manner to that of the objectors adjoining properties (i.e. for the purpose of shop top housing).

The recommendations of this report require compliance with all relevant Australian Standards including site management to control any dust or debris particles, and conditions are imposed pertaining to the hours of excavation and construction which provide some period of respite to adjoining neighbours. It is noted that this period of respite is not as long as residents would like, but it is again reiterated that development on this site is inevitable.

The application is accompanied by a detailed Construction Traffic Management Plan to accommodate the additional traffic and deliveries / removals that are due to occur during demolition, excavation and construction. The Plan details that the demolition period should take 1 month, excavation 3 months and construction 21 months (anticipated). It can be reasonably expected that the demolition and excavation stages are the most acoustically intrusive exercises, and thereby the anticipated 4 month period is considered to be realistic and should provide some level of comfort to residents.

With regards to staging separate development applications to give neighbours a respite period between different constructions on different sites, this is beyond the scope of Council's authority. It is noted that the Meriton *Lighthouse* development is due for completion in December 2018 (as estimated in April 2018). If this application is to be approved then the developer would have 5 years to commence the works on the site, and it is beyond Council's authority to determine when demolition would commence. Therefore it could be assumed that the development may commence anytime within 5 years of the favourable determination of this application.

It is considered that, where possible, this consent has imposed all reasonable conditions to ensure the adequate preservation of amenity for existing residents who live within a dense and developing town centre area both during construction period and in longevity.

### 2. Traffic

Concern is raised that the road network will not be able to cope with the additional vehicles required by this development.

Comment: The development application is buttressed by a Traffic and Parking Implications report which concludes that *the projected additional traffic generation is relatively minor and the development outcome has taken into account in the assessments which underlie the planning for Dee Why Centre*. This report and an independent review has been undertaken by Council's Traffic Engineers whom raise no objections to the development on the grounds of traffic generation or traffic safety, subject to conditions as recommended.

Accordingly this matter is not found to warrant the refusal of the application.

### 3. Overshadowing

Concern is raised that the development will overshadow adjoining properties.

Comment: The assessment of this application has found that the proposal results in an acceptable level





of solar access for surrounding properties despite contributing to an already overshadowed streetscape. The expectation of obtaining full direct sunlight must be realistic within a dense town centre area whereby every building overshadows another.

It is also found that if this subject proposal were to be reduced in height and have increased side setbacks, the level of sunlight received by adjoining properties compared to what is proposed is negligible in difference (given the scale of other surrounding developments). Accordingly it is not found that there is a reasonable alternative design solution that would enhance the level of solar access whilst still retaining the development potential of the site, and for these reasons the application is assessed as being acceptable with regards to solar access and access to sunlight.

Detailed discussions on this matter can be found elsewhere in this report.

#### **4. Construction damages**

Concern was raised that the development may cause damage to surrounding developments during excavation and, to a lesser extent, construction.

Comment: to ensure that there is a recorded documentation of damages to surrounding developments this report recommends that, if the application is deemed worthy of approval by the NBLPP Panel, that a Dilapidation Report be required to be commissioned and provided to Council for record keeping purposes.

#### **5. Asbestos**

Concern was raised in submissions received that the demolition of the existing building on the site could release asbestos particles into the air.

Comment: The demolition of buildings with asbestos in their fabric is not uncommon, particularly in the Dee Why area along Pittwater Road where many buildings are dated. The concern raised can be reasonably addressed via condition of consent to be addressed by the Private Certifying Authority, and therefore does not warrant the refusal of the application.

#### **6. Dampness caused by planters**

Concern is raised that the raised courtyard garden and planter boxes may cause dampness to adjoining developments.

Comment: This is a matter to be resolved at the Construction Certificate phase of the development and therefore does not warrant the refusal of the application.

#### **7. Property value**

Concern was raised that the development may reduce the financial value of adjoining properties.

Comment: The impacts that the development may have on adjoining properties is not for consideration in the assessment of this application pursuant to the Environmental Planning and Assessment Act 1979. Accordingly, this matter does not warrant the refusal of the application.

#### **8. Land Use**

Concern was raised in a submission that the development did not include any commercial space on the first floor of the building, and that (by the objector's calculations) the retail GLFA will be reduced by 45%.

Comment: There is no requirement under current planning controls for the first floor of the development to consist of commercial floor space. Whilst it is acknowledged that portions of the objectives of the B4 zone go towards having offices on the upper floors of the building, this requirement is not reinforced by



the permitted land uses and their definitions (i.e. shop top housing and residential flat buildings).

The development proposes five retail premises on the ground floor of the building fronting Pittwater Road and Oaks Avenue. The use of these spaces, and therefore the employment generation of them, cannot be reasonably anticipated by this application as no uses are sought. Accordingly, a condition is included in the recommendations of this report that separate applications must be lodged in future for the use of these ground floor retail premises. Ergo whilst the development does not provide commercial uses on the first floor, the use and intensity of the ground floor retail premises cannot be anticipated under this application, the use of the site proposed accords with the present planning controls pertaining to the land and is therefore satisfactory.

## MEDIATION

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

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><i>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</i></p> <p><i>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</i></p>
Environmental Health (Contaminated Lands)	<p><i>Referral has been assessed by Environmental Health, the assessment report titled Preliminary Site Investigation ref no. ES6395/2 dated 27 October 2017 stated that contamination that may be present in some of the areas of the site was considered to be low to moderate risk to human health and environment and requires a detailed site investigation (phase 2) assessment to ensure that the property is safe for its intended use.</i></p> <p>Planners Comments: Refer to discussion under SEPP 55</p>
Environmental Health (Industrial)	<p><i>Environmental Health has reviewed the application and there is no detail on how the noise generated from the property is going to be managed and not create offensive noise to sensitive receivers and the affect the amenity of the area.</i></p> <p><i>Environmental Health recommends that the applicant provides an acoustic report addressing these matters</i></p> <p><u>Planner comment</u> It is not considered that the development will generate excessive noise that would be unreasonable within the context of the site. It is considered that the portion of the building that could most give the highest acoustic impact is from the ground floor retail tenancies fronting Pittwater Road and Oaks Avenue.</p> <p>The recommendations of this report do not grant use to the retail premises, thereby the use and hours of operation of these spaces</p>





Internal Referral Body	Comments
	would be subject to future applications and these matters are not required to be addressed via the recommendations of this report. It is considered that when these applications do arise appropriate conditions can be imposed to ensure that the amenity of occupants of the development and surrounding developments is maintained.
Landscape Officer	<p><i>No objections in general terms to the proposed internal landscape elements, subject to conditions.</i></p> <p><i>It is noted that the landscape plans include works within the Pittwater Road and Oaks Ave road reserves.</i></p> <p><i>Species of trees have not been nominated, presumably seeking direction from Council in accordance with the Dee Why Town Centre Masterplan.</i></p> <p><i>Direction from Roads Assets or Urban Design sections may be forthcoming via the referral process, however if not, further discussion can be had to nominate species and conditions.</i></p>
NECC (Development Engineering)	<p><u>Response 24 May 2018</u> Development engineers have received comments from Council's Traffic Engineers and raise no objections to the proposal subject to conditions.</p> <p><u>Response 20 March 2018</u> Development Engineers have assessed the stormwater drainage proposal and consider the proposal acceptable.</p> <p>However, Development Engineers are unable to finalise comments without Council's Traffic Engineers and Road Assets Manager's feedback. Please forward comments from these two teams to Development Engineers in order for Development Engineers to finalise engineering comments.</p> <p><u>Response 12 December 2018</u> Development Engineers have reviewed the proposal and cannot support the proposal due to the following reasons.</p> <p>1. The proposed onsite stormwater detention tank is located under the retail shops no. 4 and 5 which are considered habitable. This does not comply with Section 9.1, Onsite Stormwater Detention of Council's PL 850 Water : Water Management Policy, as there is potential for water seepage/condensation which may cause damage to materials being kept or used in the retail shops no. 4 and 5.</p> <p>2. In order for Council to adequately check the design of the OSD system, when the DRAINS program is used, the input data and summary information including a copy of the model on computer disc must be provided. This information has not been submitted to Council's Development Engineers for assessment to date.</p>



Internal Referral Body	Comments
	<p>3. The applicant proposes to discharge stormwater into a Council pit and pipeline that is expected to be constructed in roughly mid 2018 (see trim no. 2017/515454). To allow this development to proceed without any delays due to the drainage works to be undertaken by Council in Oaks Avenue, the applicant is to construct the above new and pipeline and connect to Council's junction pit located in the middle of the road. This is to be clearly reflected on the stormwater drainage plans.</p> <p>4. An engineering longitudinal section through the outlet pipe from the OSD tank to the connection into the Council system must be provided. This longsection is to show design invert levels, finished surface levels, pipes size, design flows, all utility services that may cross the line and a hydraulic grade line. Development Engineers are unable to proceed with the assessment of the stormwater drainage proposal without this information. Note: It is the responsibility of the Applicant to provide full details of all relevant services that may conflict with the proposed OSD system(s) and stormwater lines. The exact locations of any crossings or connections are to be shown.</p> <p>5. In the event of a blockage to the OSD system, stormwater will surcharge out of the grate pit (top of grate level RL18.60m). Insufficient freeboard is provided between habitable floor levels (proposed design finished floor level of shop No. 4 and 5 is RL18.70m) and surcharge flow path level of RL18.60m. This does not comply with section 4.5 of Council's OSD Technical Specification and there is not acceptable to Council.</p> <p>6. Development Engineers are unable to finalise comments without Council's Flooding Team, Traffic Engineers and Road Assets Manager's comments. Please forward comments from these three teams to Development Engineers in order for Development Engineers to finalise engineering comments.</p> <p>Not supported for approval due to lack of information to address:</p> <ul style="list-style-type: none"> <li>Stormwater drainage for the development in accordance with clause C4 Stormwater of the DCP</li> </ul>
NECC (Stormwater & Floodplain Engineering – Flood risk)	The proposed development is subject to overland flows on both the Pittwater Road and Oaks Avenue frontage. Appropriate controls have been incorporated into the design to manage the flood risk for future occupants. The development is recommended for approval subject to conditions.
NECC (Water Management)	No objection to approval subject to conditions. The conditions as provided by Environmental Health relating to contaminated lands will also cover the discharge requirements.
Road Reserve	Limited impact on existing road assets. No objection to the proposal.





Internal Referral Body	Comments
	<p><i>Development Engineering and Certification to condition development to undertake streetscape improvements in accordance with Council's Dee Why town centre masterplan and approved construction drawings as part of a s139 application/approval together with standard conditions for driveway approvals, bonds, etc,</i></p> <p><i>Development Engineering to ensure adequate awning over footpath is provided in Pittwater Road and Oaks Avenue.</i></p>
Strategic & Place Planning (Urban Design)	<p><i>Detail design is currently in progress for the upgrading works of the road and footpath design along the Pittwater road and Oaks Avenue frontages as part of the staged Dee Why Town Centre improvement works. The proposed street awning along Oaks avenue should extend across the entire building elevation. New awning along Pittwater road is to be set back minimum 1000mm from the face of the kerb to accommodate utility poles and traffic/parking in the kerbside lane. Where street trees are required along Oaks Avenue, the awning should be set back from the kerb along its entire length by not less than 1500mm to accommodate the trees. The minimum width of the awning is to be 2000mm. The proposed cut out segments are not required. Final design of the street awnings should be coordinated and confirmed with Council before progressing to construction.</i></p> <p><b>Planner Comment:</b> The applicant has amended the architectural plans to remove cut out segments and to change the minimum width of the awning. The continuation of the awning along Oaks Avenue to the eastern boundary has not been shown in the amended architectural plans, and accordingly it is found that this matter can be reasonably resolved via condition.</p>
Traffic Engineer	<p><u>Response 9 April 2018</u> <i>Reviewing the applicant's letter dated 15 March 2018 provided in response to the Council's concerns, all concerns raised by the Council's traffic engineer have been satisfactorily addressed. Therefore, no objection is raised on the proposal on traffic grounds.</i></p> <p><u>Response 17 January 2018</u> <i>This application is for a mixed development in Dee Why town centre comprising of 5 ground floor retail/commercial units, 45 residential units, including 4 basement carpark levels.</i></p> <p><i>In terms of parking the site has provisions for 79 spaces consisting of 17 retail, 45 residential, and 9 visitor spaces which meets and exceeds Council's off-street parking requirements. As the visitor parking is intended for the residential component, the location of visitor parking would need to be behind a control point (security shutters or a boom gate, including an intercom system) from the retail sections of the carpark. This is required so that visitors or staff to the commercial premises (or the adjacent 'isolated site' carpark in a future expansion) do not exploit these spaces.</i></p> <p><i>Hatched area identified in the plans as 'vehicle turning area' in all</i></p>



Internal Referral Body	Comments
	<p>basement levels does not appear to be beneficial for any specific vehicle turning movements, and should be removed or replaced.</p> <p>Under part C3(A) of the Warringah Development Control Plan 2011, some form of end of trip facilities must be provided including: bathroom/change area(s) containing at least one toilet, wash basin, mirror, clothing hooks, and power points, a minimum of one (1) shower cubicle, private changing area with a bench and minimum of two (2) clothing hooks. A suitably sized clothes locker is also to be provided.</p> <p>Additional traffic generation from the site comprise of levels considered acceptable for a town centre development and impact to the surrounding road network is not significant to warrant a refusal.</p> <p>There is an access issue through the curved ramp leading from the driveway into the first basement level. The provided plans indicate a headroom clearance of 3.1m, 3.3m and 2.85m, which will not be enough for a standard SRV with 3.5m height clearance requirement. The above issue would need to be resolved and in its current form the application is not supported based on safety and access issues.</p>
Waste Officer	Waste Services raises no objection to the proposed development, subject to conditions as recommended.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	Ausgrid has assessed the proposed development and raises no objections to the proposal, subject to the enforcement of a number of conditions which can be found in the recommendation of this report.
Ausgrid: (Substation)	No response was received from Ausgrid Substations and it is therefore assumed that no objections are raised to the development and no conditions are recommended.
NSW State Transit (Bus stops)	The application was referred to NSW State Transit (Bus Stops) for comment and no response has been received, accordingly it is assumed that no objections are raised to the development and no conditions are recommended.
NSW Police - Local Command (CPTED)	The application was referred to NSW Police - Local Command for comment and no response has been received, accordingly it is assumed that no objections are raised to the development and no conditions are recommended.
Nominated Integrated Development – NSW Office of Water – Department of Primary Industries (Permit for Temporary Construction Dewatering)	Water NSW has assessed the proposal for integrated development under the Water Management Act 2000 for temporary dewatering during construction phase. Water NSW has given their General Terms of Approval to the development which are included as conditions in the recommendation of this report.
Concurrence - NSW Roads and Maritime Services - (SEPP Infra. Traffic generating dev)	Roads and Maritime has reviewed the submitted application and raises no objections to the proposed development, subject to the following conditions being included in any consent issued by Council (refer to the recommendations of this report).





## ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\*

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

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

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

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

#### SEPP 55 - Remediation of Land

Clause 7(1)(a) of SEPP 55 requires the consent authority to consider whether land is contaminated.

In response to the above requirements of the SEPP, the applicant has submitted a Preliminary Site Investigation dated 27 October 2017 and prepared by Aargus Pty Ltd. In its conclusion, the investigation states:

*The findings of the assessment indicated the following areas of potential environmental concern:*

- Potential importation of uncontrolled fill that may contain various contaminants;
- Current or past use of pesticides;
- Car park and loading dock areas where leaks and spills from cars may have occurred;
- Current and historical site activities; and
- Potential asbestos contained building materials.

*The contaminants that may be present in some of these areas were considered to be of low to moderate significance in terms of risk to the human and environmental receptors identified.*

*Therefore, a Detailed Site Investigation (DSI) is required to confirm the presence and extent of contamination in order to determine the suitability of the site for the proposed development application and to address the data gaps identified.*

*Based on the information collected during this investigation and in reference to Clause 7 (DA development of SEPP 55), the site will be suitable subject to the completion of a Detailed Site Investigation (and after remediation and validation, if required) for the proposed seven storey mixed retail and residential building including four-level basement parking.*

Therefore, as the Investigation indicates that there is a potential for contaminants to exist on the site, Clauses 7(1)(b) and 7(1)(c) of the SEPP must be considered.

Clause 7(1)(b) stipulates that "if the land is contaminated, it [Council] is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out".

Given the claimed potential of contamination on the site as noted in the Phase 1 Investigation, a Phase



2 Environmental Site Assessment (the DSI mentioned above) should be undertaken to confirm whether contamination is actually present, at what levels and at what locations. Council's Environmental Health Officer has reviewed the report and the recommendation that the site poses a low to moderate risk to human health and environment and concurs with the recommendations of the report that a DSI be completed prior to Construction Certificate.

Clause 7(1)(c) stipulates that *"if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose"*.

Council's Environmental Health Officer is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation are included as conditions in the Recommendation of this report.

#### **SEPP 65 - Design Quality of Residential Apartment Development**

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

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

*(a) the development consists of any of the following:*

- (i) the erection of a new building,*
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,*
- (iii) the conversion of an existing building, and*

*(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and*

*(c) the building concerned contains at least 4 or more dwellings.*

As previously outlined the proposed development is for the erection of a seven storey shop top housing development plus four levels of basement car parking for the provisions of 45 self-contained dwellings and 5 retail premises and accordingly the provisions of SEPP 65 are applicable to the assessment of this application.

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

Clause 28 of SEPP 65 requires:

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

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





(c) the Apartment Design Guide.

## DESIGN REVIEW PANEL

Northern Beaches Council does not have an appointed Design Review Panel.

## DESIGN QUALITY PRINCIPLES

### Principle 1: Context and Neighbourhood Character

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

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

Comment: The site is located adjacent to the identified precinct of the key sites of the Dee Why Town Centre which, at present, is undergoing rapid urbanism and densification, particularly with regard to residential accommodation. The site and surrounding Town Centre area is envisioned to be a vibrant hub for the Northern Beaches community that is predominantly characterised by buildings of a height greater than anywhere else in the Local Government Area (LGA).

The development for the construction of a multi-storey shop top housing development is consistent with the permissible and envisioned use of the area that will contextually suit the greater surrounding locale and will contribute to enforcing the presence of Dee Why as an emerging Town Centre.

As detailed in greater emphasis in the Site Analysis section of this report against the objectives of the Apartment Design Guide (ADG), the site is unusually constrained by irregularly developed sites on all boundaries and has a dual street frontage. In this assessment it is found that the built form and scale of development is compatible with and enhancing to the surrounding area and respects the existing and desired neighbourhood character of the Pittwater Road corridor through Dee Why.

The development proposed is within what could reasonably be expected to be developed on the site in accordance with the applicable planning controls and is designed in a manner that does not have unreasonable or detrimental amenity impacts upon adjoining and adjacent sites, the streetscape or the neighbourhood.

In acknowledging the changing nature of the Dee Why Town Centre the site is identified and reasonably expected to be developed, and the proposal presently before Council is contextually appropriate for this site and satisfies Principle 1.

### Principle 2: Built Form and Scale

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

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

Comment: The proposed built form on the site is of a typology and scale that is envisaged by the current planning controls and is what could reasonably be expected to be constructed on the site. The



scale, bulk and height proposed are compatible with the streetscape and the greater Dee Why Town Centre area both at present and in future (under current controls). The architecture proposed is considered to be of good design that has contextually addressed existing surrounding developments, opportunities for light corridors and the development potential of adjoining lands. The development will enhance and contribute to the character of the streetscape and is considered to satisfy Principle 2.

### **Principle 3: Density**

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

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

Comment: The limitation of density that the subject site is capable of accommodating is determined by the built form controls applicable to the land and the design guidance provided by the SEPP 65 and the ADG. In this particular circumstance the development meets the objectives of, and complies with the majority of the built form requirements for the site and, in all but two apartments proposed, has a minimum internal area that is deemed sufficient by the ADG. Accordingly, the scale of the building is of a density that is permissible and could reasonably be envisioned on this site. Similarly the density sought after by this development application is consistent with the desired character and scale of Dee Why Town Centre and is appropriate for the area given the surrounding infrastructure, access to jobs, community facilities and the environment. Accordingly, the proposal is deemed to satisfy Principle 3.

### **Principle 4: Sustainability**

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

Comment: The architecture proposed incorporates adequate sustainability features to satisfy the current planning requirements including passive elements such as cross ventilation and natural sunlight that are likely to have the greatest benefit for the amenity of occupants. The development satisfies Principle 4.

### **Principle 5: Landscape**

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

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

Comment: The site has minimal opportunities for deep soil landscaping given the requirement for basement car parking and the scale of surrounding developments. Notwithstanding this, the development proposes a large central landscaped courtyard which, contextually, will be visible from many surrounding developments and will significantly enhance the visual amenity of all surrounding residents. The development also has podium landscaping integrated into the overall design of the building which provides a positive aesthetic and a contextual fit in the streetscape, and thereby





satisfying Principle 5.

**Principle 6: Amenity**

*Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.*

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

Comment: The development provides well designed apartments in a vibrant locale with lots of employment and retail opportunities. For internal residents the amenity appointed by each individual apartment and the communal open space proposed is satisfactory within the reasonable expectations of town centre living. For surrounding neighbours of the development the building will not reduce the amenity to such a magnitude that would be of significant detriment. Whilst the development will cause additional overshadowing and will somewhat close in portions of the balconies of the adjoining development to the east (given their unusual layout) the impact is not so severe that would warrant a major redesign of the building.

The development accommodates appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and an ease of access for all age groups and degrees of mobility. Accordingly the proposal is assessed as satisfying Principle 6.

**Principle 7: Safety**

*Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.*

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

Comment: The development provides a suitable degree of safety and security for residents and patrons of the retail premises, whilst also allowing for increased casual and passive surveillance of the public domain. The development satisfies the principles of CPTED and therefore satisfies Principle 7.

**Principle 8: Housing Diversity and Social Interaction**

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

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

Comment: The development provides a varied mix of apartments sizes and styles to provide housing choice for different demographics, living needs and household budgets. Each apartment is considered to be of an appropriate scale and has a layout and features to provide a for a high quality of living. This high quality of living is further amplified by the large common landscaped courtyard that provides sufficient opportunities for outdoor recreational activities and social interaction. Further and beyond the scope of the development itself, the site is positioned within the middle of a town centre area and a 10 minute walk to Dee Why Beach. The location and context of the site provides for ample opportunities





for social interaction to increase the happiness of residents.

#### Principle 9: Aesthetics

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

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

**Comment:** The development proposed is of such a quality that will enhance the visual aesthetics of the site when viewed from the streetscape and other surrounding developments. The building has good proportions and incorporates an interesting palette of materials and landscaping to contribute to the overall streetscape. The development is also considered appropriate to the context of the existing site and possible future developments of adjoining land in accordance with current planning controls by virtue of visual aesthetic.

#### APARTMENT DESIGN GUIDE

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

Criteria / Guideline	Comments
<b>Part 3 Siting the Development</b>	
<b>3A - Site analysis</b> Does the development relate well to its context and is it sited appropriately?	<p><b>Consistent</b></p> <p>The subject development site is a large and unusual shape allotment (comprised of three allotments) located within the Dee Why Town Centre. The site has two street frontages of streets that have a different hierarchy in terms of usage that can prove restrictive on the ground floor uses of the building. The site is also bound by several other developments of a similar scale and is unusually constrained by a shop-top housing development to the east which has not built to the boundaries of the site, and has instead provided side-facing balconies. The site isolates another allotment (874 Pittwater Road) (by virtue of boundary sharing) which the developer has been unable to obtain as a part of this development.</p> <p>Therefore the immediate site context must consider the isolated of 874, the unusual design of the adjoining building to the east, the heights of surrounding buildings and the fact that Pittwater Road is of a higher-usage than Oaks Avenue. The layout of the proposed</p>



	<p>development and the positioning of the communal courtyard demonstrate that the site has been designed to maximise penetration of sunlight between the other surrounding buildings and to provide the greatest degree of visual privacy both internal of the site and external. The location of the courtyard has taken opportunity from the placement of other surrounding development's private open spaces to create a light-corridor into the space.</p> <p>The development within the Dee Why Town Centre local context is consistent with the desired character of the Town Centre area and is of a scale, height, intensity and usage envisioned for the site. Despite having several minor contraventions to various standards, the development overall is consistent with the plan for Dee Why and is an appropriate type of development for the area.</p> <p>In the wider context the development contributes to Dee Why's existence as a major employment and development precinct within the Northern Beaches LGA.</p> <p>Accordingly, it is found that the site analysis provided by the applicant and undertaken by Council sufficiently demonstrates that design decisions have been based on the opportunities and constraints of the site and the surrounding context at a site specific, local context and wider context scale.</p>
<p><b>3B - Orientation</b> Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?</p>	<p><b>Consistent</b> The development is appropriately orientated to the two street frontages to maximise solar access within the development and for surrounding developments and to maximise the streetscape appeal of the development. The provision of the large central courtyard is orientated in such a manner that is contributes to the amenity of the subject development as well as other surrounding developments (by virtue of outlook, visual bulk and solar access).</p>



<p><b>3C - Public domain interface</b> Does the development transition well between the private and public domain without compromising safety and security?</p> <p>Is the amenity of the public domain retained and enhanced?</p>	<p><b>Consistent</b> The proposal has an appropriate public domain interface that does not compromise safety and security. This matter is elaborated upon later in this report.</p>
<p><b>3D - Communal and public open space</b> Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> <li>1. Communal open space has a minimum area equal to 25% of the site</li> <li>2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)</li> </ol>	<p><b>Not Consistent</b> The development provides a courtyard in the north-eastern corner of the site that has an area of approximately 190m<sup>2</sup>. The courtyard is located on the first floor (above the driveway and associated infrastructure) and has lawn, plantings, terraces and pergola areas with barbeques and other casual recreational spaces.</p> <p>The provision of communal open space for residents only accommodates 18% of the total site area, representing a 28% variation to the minimum size requirement. In the circumstances of this development the variation is supported as residents of the development are afforded their own private balcony areas as well as the communal courtyard. The context of the site within the Dee Why Town Centre also provides opportunities for recreation, social interaction and general amenity through the proximity to cafes, bars, public parks and Dee Why Beach to the east. Thereby, whilst not strictly providing the required quantum of communal open space, the proposed provision is deemed to be satisfactory in this particular circumstance.</p> <p>It is additionally noted that the communal open space does not achieve a minimum of 50% direct sunlight for a minimum of two hours on the winter solstice. The orientation of the allotment and the pre-existing developments surrounding the site make compliance with the standard unobtainable unless the communal open space were to be proposed on the roof of the building - which would then have other amenity impacts (additionally noting that the PLM for this application recommended that no</p>





	<p>usable spaces be located on the roof of the building).</p> <p>The location selected for the communal open space has considered the recesses of surrounding development and their private open spaces areas to try and harness the maximum solar penetration into the courtyard, particularly due north-east through the building gaps of the adjoining site.</p> <p>Access to sunlight is discussed elsewhere in this report, but in summary, despite not strictly meeting this standard of the ADG, the provision of communal and public open space is considered to be acceptable.</p>												
<p><b>3E - Deep soil zones</b></p> <p>Deep soil zones are to meet the following minimum requirements:</p> <table><tr><th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr><tr><td>Less than 650m<sup>2</sup></td><td>-</td><td rowspan="4">7%</td></tr><tr><td>650m<sup>2</sup> – 1,500m<sup>2</sup></td><td>3m</td></tr><tr><td>Greater than 1,500m<sup>2</sup></td><td>6m</td></tr><tr><td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td><td>6m</td></tr></table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m <sup>2</sup>	-	7%	650m <sup>2</sup> – 1,500m <sup>2</sup>	3m	Greater than 1,500m <sup>2</sup>	6m	Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m	<p><b>Not Consistent</b></p> <p>The site has no deep soil landscaping throughout. The landscaped areas proposed are not at ground level and do not have a soil depth sufficient to warrant the establishment in longevity of mature large plantings and therefore does not qualify as deep soil landscaping.</p> <p>Notwithstanding this variation, the soil depth proposed is such that can accommodate small to medium scale vegetation that will be compatible with other developments and enhance the overall development.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)											
Less than 650m <sup>2</sup>	-	7%											
650m <sup>2</sup> – 1,500m <sup>2</sup>	3m												
Greater than 1,500m <sup>2</sup>	6m												
Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m												
<p><b>3F - Visual privacy</b></p> <p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table><tr><th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table> <p><b>Note:</b> Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p><b>Not Consistent</b></p> <p>The development is a seven storey building and is therefore subject to two different spatial separation controls for the different levels of the building. On all floors there are three proposed balconies that breach the minimum separation required for visual privacy, and these are from Units 04, 05 and 06 on the podium levels and Units 03, 04 and 05 on the levels above.</p> <p>The balconies have varying distances from one another of between 3.5m and 5.5m, thereby breaching the control by up to 5.5m.</p>
Building height	Habitable rooms and balconies	Non-habitable rooms											
Up to 12m (4 storeys)	6m	3m											
Up to 25m (5-8 storeys)	9m	4.5m											
Over 25m (9+ storeys)	12m	6m											



<p><i>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</i></p>	<p>Despite the separation distances proposed and the technical non-compliance, the building has been designed in such a manner that direct overlooking from one balcony into another is minimised. Fixed privacy screening on these balconies make portions of other balconies screened despite the proximity which allows for a reasonable provision of visual privacy within a town centre area.</p> <p>The development does not result in any unreasonable or adverse visual privacy concern for adjoining residential properties given their configurations.</p>
<p><b>3G - Pedestrian Access and Entries</b> Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p><b>Consistent</b></p> <p>The building has various entry points throughout to the five retail premises and to the residential lobby. Each of the entrances are considered to be appropriately positioned on the site to enable easy identification from the streetscape, thereby satisfying the requirement of the control.</p> <p>The scale of the site is not considered to be of a magnitude that warrants nor would achieve any benefit from the provision of a pedestrian link through the site.</p>
<p><b>3H - Vehicle Access</b> Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p><b>Consistent</b></p> <p>The proposed vehicular access point is in the same location as the existing driveway on the site. The proposal has been reviewed by Council's Traffic Engineers whom have raised no concerns regarding the safety of the vehicular and pedestrian interface, and thereby satisfies the control. The driveway positioning and overall design is also considered the most appropriate solution to contribute to a high quality streetscape.</p>
<p><b>3J - Bicycle and car parking</b> For development in the following locations:</p> <ul style="list-style-type: none"> <li>On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul>	<p><b>Consistent</b></p> <p>An assessment of the provision of bicycle and car parking spaces can be found in section C3 of this assessment report in accordance with Council's parking rates stipulated in Appendix H of the WDCP 2011.</p>



<p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p>In summary, the development is found to be consistent with the requirements.</p>
<b>Part 4 Designing the Building</b>	
<b>Amenity</b>	
<p><b>4A - Solar and daylight access</b></p> <p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> <li>Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.</li> <li>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter</li> </ul>	<p><b>Not Consistent</b></p> <p>The development does not achieve compliance with the numerical requirements set out in Part 4A of the ADG. Namely, only 64% of apartments proposed achieve the minimum 2 hours direct sunlight on the winter solstice and 35% of the units receive no direct sunlight on the winter solstice.</p> <p>As detailed elsewhere in this report, the site is constrained by its primary orientation to the south and existing development on adjoining lands which severely restrict opportunities for direct solar access. Notwithstanding this, the orientation of the development and the large central courtyard provide natural light into the apartments. Whilst direct solar access is more desirable, natural light can still provide an appropriate level of amenity.</p> <p>It is found that despite not meeting the ADG's recommendation the level of solar access achieved is satisfactory within a densely developed town centre area, and the achieving full compliance with this control would severely restrict the development potential of this site given its positioning south of much larger developments.</p> <p>Accordingly, the provision of solar and daylight access is considered acceptable on merit.</p>





#### 4B - Natural ventilation

The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:

- At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.
- Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.

#### Consistent

The development is less than nine storeys in height.

27/45 of the apartments (60%) are cross-ventilated and therefore complies with the requirements of the control.

#### 4C - Ceiling heights

Measured from finished floor level to finished ceiling level, minimum ceiling heights are:

Minimum ceiling height	
Habitable rooms	2.7m
Non-habitable	2.4m
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area
Attic spaces	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area
If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area

#### Consistent

The development provides 3.1m floor-to-floor heights which incorporates a 0.4m slab and service space, thus leaving a floor-to-ceiling height of 2.7m for each apartment.

The ground floor retail has a floor-to-ceiling height of 4.2m incorporating 0.9m slab and service space.

Therefore the development complies with this control.

#### 4D - Apartment size and layout

Apartments are required to have the following minimum internal areas:

Apartment type	Minimum internal area
Studio	35m <sup>2</sup>
1 bedroom	50m <sup>2</sup>
2 bedroom	70m <sup>2</sup>
3 bedroom	90m <sup>2</sup>

#### Not Consistent

The development proposes a mix of one and two bedroom apartments. Unit 06 on both Level 5 and 6 are identified as 'Studio' apartments, however they are most suitably described as 1 bedroom apartments.

The two Unit 06 1 bedroom apartments have an internal area of 46.25m<sup>2</sup> which



The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.

A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.

Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.

Habitable room depths are limited to a maximum of 2.5 x the ceiling height.

In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.

Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space).

Bedrooms have a minimum dimension of 3m (excluding wardrobe space).

Living rooms or combined living/dining rooms have a minimum width of:

- 3.6m for studio and 1 bedroom apartments
- 4m for 2 and 3 bedroom apartments

The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts

equates to a variation to the control requirement of 3.75m<sup>2</sup>. These two variations are considered minor and do not unreasonably impact on the amenity of the apartment and are therefore assessed as being satisfactory.

The remainder of units within the development comply with the minimum internal area pursuant to the ADG.

#### 4E - Private open space and balconies

All apartments are required to have primary balconies as follows:

Dwelling Type	Minimum Area	Minimum Depth
Studio apartments	4m <sup>2</sup>	-
1 bedroom apartments	8m <sup>2</sup>	2m
2 bedroom apartments	10m <sup>2</sup>	2m
3+ bedroom apartments	12m <sup>2</sup>	2.4m

For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3m.

#### Consistent

Units 06 on Level 5 and 6 have been designed to meet the requirement for a Studio apartment, however Council's assessment finds that they are most suitably 1 bedroom apartments - given that they have a separate bedroom. These two units have a primary balcony of 7m<sup>2</sup> which represents a 1m<sup>2</sup> variation to the standard.

The architecture of the proposal allows for the internal living spaces to open entirely onto the balcony which results in the space feeling larger than it actually is. Additionally, the scale proposed is still a usable size, and the variation sought is not of the magnitude that would warrant refusal of the application. Accordingly, these two 1m<sup>2</sup> variations are supported.



	<p>The remainder of the units within the development comply with the minimum primary balcony space requirements pursuant to the ADG.</p> <p>Additionally, it should be noted that some apartments within the development have secondary balconies (in the region of 4 - 6m<sup>2</sup>) which provide additional private open space, natural light and ventilation.</p>										
<p><b>4F - Common circulation and spaces</b> The maximum number of apartments off a circulation core on a single level is eight.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<p><b>Consistent</b> The maximum number of apartments located on each floor of the building is 8 (Level 1 - 3) and then 7 apartments (Level 4 - 6).</p>										
<p><b>4G - Storage</b> In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table border="1"> <thead> <tr> <th>Dwelling Type</th><th>Storage size volume</th></tr> </thead> <tbody> <tr> <td>Studio apartments</td><td>4m<sup>2</sup></td></tr> <tr> <td>1 bedroom apartments</td><td>6m<sup>2</sup></td></tr> <tr> <td>2 bedroom apartments</td><td>8m<sup>2</sup></td></tr> <tr> <td>3+ bedroom apartments</td><td>10m<sup>2</sup></td></tr> </tbody> </table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling Type	Storage size volume	Studio apartments	4m <sup>2</sup>	1 bedroom apartments	6m <sup>2</sup>	2 bedroom apartments	8m <sup>2</sup>	3+ bedroom apartments	10m <sup>2</sup>	<p><b>Consistent</b> All storage for apartments is located wholly within the apartment, with areas for bulk storage and waste storage to be located within the basement levels of the development. The provisions of storage proposed are appropriate commensurate to the apartment sizes.</p>
Dwelling Type	Storage size volume										
Studio apartments	4m <sup>2</sup>										
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<p><b>4H - Acoustic privacy</b> Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.</p>	<p><b>Consistent</b> The building is designed in a manner that the predominant source of noise would be generated from the south-eastern corner of the site where there is the driveway into the development. The architecture of the proposal has appropriately positioned bedrooms and living areas around this entrance to ensure that no unreasonable acoustic impact would be generated.</p> <p>Additionally, the rear landscaped courtyard is considered to be designed appropriately to restrict any acoustic impact upon surrounding bedrooms by virtue of a landscape buffer.</p>										
<p><b>4J - Noise and pollution</b> Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.</p>	<p><b>Consistent</b> The layout and architecture of the building is such that the impacts of external noise and the noise transfer</p>										





	from the development itself are not considered to be unreasonable nor detrimental. The noise generated by the development will be no different to other surrounding developments, likewise with any acoustic impacts received by occupants of the development.
<b>Configuration</b>	
<b>4K - Apartment mix</b> Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	<b>Consistent</b> The development provides 30 one bedroom apartments and 15 two bedroom apartments.  The Dee Why Town Centre area is presently undergoing significant development, with the predominant form of development being shop top housing.  Recent developments within the immediate vicinity of this site comprise of apartment mixes of one, two and three bedroom apartments, with a large proportion being 2 bedroom apartments.  Therefore, the proposed provision of apartment mix in the subject development is consistent with other developments and will contribute to cater for the market needs of the community, particularly with the predominance of one bedroom apartments in this development.
<b>4M - Facades</b> Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	<b>Consistent</b> The architecture of the Pittwater Road and Oaks Avenue facade is considered to be of a high quality design that incorporates a palette of materials and landscaping at podium level that will contribute to creating visual interest within the streetscape. The development is not only compatible with surrounding buildings by virtue of scale, but the overall architecture is considered to be of a higher quality, thereby setting a new benchmark of development within the streetscape that will contribute to defining and expressing the desired future character of the area.
<b>4N - Roof design</b>	<b>Consistent</b>



Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Test whether the roof space can be maximised for residential accomodation and open space.	The roof design proposed is considered to be satisfactory and cannot be maximised for residential accommodation nor open space.																																			
<b>4O - Landscape design</b> Was a landscape plan submitted and does it respond well to the the existng site conditions and context.	<b>Consistent</b> The development application is accompanied by a detailed suite of landscaped plans.  The landscape concept proposed is considered to be an appropriate response to the site constraints and the locations of existing surrounding buildings. The scale of the central landscaped area is considered to be of desirable amenity within a town centre location and incorporates appropriate features and plantings to maximise internal amenity, the provision of privacy and the durability of the landscaped setting in longevity.																																			
<b>4P - Planting on structures</b> When planting on structures the following are recommended as minimum standards for a range of plant sizes:	<b>Consistent</b> The architectural plans submitted to accompany the development application demonstrate the sufficient soil depths have been provided for the communal courtyard and on private podium terraces to accommodate various scales of vegetation.																																			
<table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m<sup>3</sup></td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m<sup>3</sup></td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m<sup>3</sup></td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m <sup>3</sup>	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m <sup>3</sup>	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m <sup>3</sup>	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		
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<b>4Q - Universal design</b> Developments are to achieve a benchmark of 20% of the	<b>Consistent</b> The development achieves a minimum																																			



total apartments incorporating the Livable Housing Guideline's silver level universal design features.	20% of the total apartments incorporating the Living Housing Guidelines silver level universal design features.
<b>4R - Adaptive Reuse</b> New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	<b>Not Applicable</b> The development does not propose to utilise any existing structures on the site and thereby adaptive re-use is not an applicable design principle to this development.
<b>4S - Mixed Use</b> Can the development be accessed through public transport and does it positively contribute to the public domain?  Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	<b>Consistent</b> The proposed development is for the construction of a shop top housing complex which is a form of 'mixed use development'.  The ground floor of the proposal consists of five retail outlets, and atop of the ground floor are six floors of residential accommodation.  The proposed ground floor retail outlets provide outdoor areas fronting the public street which will enhance and positively contribute to the public domain.  The site is located in the Dee Why Town Centre and is within proximity to public transport and other retail outlets.
<b>4T - Awnings and signage</b> Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.  Signage must respond to the existing streetscape character and context.	<b>Consistent</b> The development provides awnings over public footpath on both Pittwater Road and Oaks Avenue. The awning will provide weather protection to pedestrians and will complement the building design.
<b>Performance</b>	
<b>4U - Energy efficiency</b> Have the requirements in the BASIX certificate been shown in the submitted plans?	<b>Consistent</b> The suite of documentation accompanying the development application includes the requirements of the BASIX Certificate on the architectural plans.
<b>4V - Water management and conservation</b> Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	<b>Consistent</b> The application has received General Terms of Approval from Water NSW with regards to temporary dewatering during construction, and the overall stormwater design has been assessed





	as satisfactory by Council's Development and Flooding engineers. Accordingly, it is considered that the development has taken into account all water measures that are applicable.
<b>4W - Waste management</b> Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.	<b>Consistent</b> The proposed provision of waste management is acceptable in accordance with the relevant Council policies.
<b>4X - Building Maintenance</b> Incorporates a design and material selection that ensures the longevity and sustainability of the building.	<b>Consistent</b> The architecture of the proposal has taken a considered approach to select robust and durable facade materials to preserve the aesthetic and integrity of the building in longevity.

#### STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

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

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

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

Comment: The reasons contained in Clause 30 are not being used as reasons for refusal of this development application.

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

- (a) the design quality principles, and*
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.*

*(3) To remove doubt:*

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



applies.

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

**Comment:** The application has sufficiently demonstrated that the development can satisfy the design quality principles and the objectives of the Apartment Design Guide.

#### SEPP (Infrastructure) 2007

##### Ausgrid

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

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

**Comment:** The proposal was referred to Ausgrid. Ausgrid has responded to the proposal on 15 November 2017 and raised no objections to the proposal, subject to conditions as included in the recommendation of this report.

#### Warringah Local Environmental Plan 2011

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

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	24m	24.70m	2.9% (700mm)	No

Note: the portions of the development exceeding the building height limit include the lift overruns, clerestory windows and other service infrastructure.

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes



Clause	Compliance with Requirements
5.3 Development near zone boundaries	Yes
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes

#### Detailed Assessment

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

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard has taken into consideration the questions established in *Winter Property Group Limited v North Sydney Council [2001] NSW LEC 46 (Winter)*.

Requirement:	24m
Proposed:	24.70m (RL43.65)
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
Variation to requirement sought	2.9% (700mm)

The proposal must satisfy the objectives of Clause 4.3 *Height of Buildings*, the underlying objectives of the particular zone, and the objectives of Clause 4.6 *Exceptions to Development Standards* under the WLEP 2011. The assessment is detailed as follows:

#### **Description of non-complying elements of the development**

There are several portions of the building which exceed the maximum building height standard of 24m and these are elements are composed of clerestorey windows, lift overruns and building services.

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

The prescribed height of buildings limitation pursuant to Clause 4.3 of the WLEP 2011 is a development standard.

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

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

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

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

Comment: The portions of the building which exceed the Height of Buildings development standard are centrally located within the footprint of the buildings and are not expected to be visible from the streetscape or other surrounding buildings (with the exception of the Meriton development that is currently under construction to a height of 17 storeys). Therefore, from the general streetscape, it would not be discernible that this development breaches the standard. The





scale of the development is appropriate within the context of the site and is what would be readily envisioned on the site by the relevant planning controls. Despite the 700mm variations sought, it is considered that the proposal is compatible with the height and scale of surrounding developments and with the developments that could be reasonably expected on surrounding sites in the future. Accordingly, it is found that the proposal satisfies this objective.

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

Comment: The portions of the development which protrude above the maximum permissible building height are not of a scale, location or use that would give rise to any unreasonable or adverse amenity impacts upon adjoining sites. The variations sought are considered to be minor within the greater context of the town centre environment and are not inconsistent with elements of other surrounding developments.

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

Comment: It is not anticipated that the non-complying elements will be readily visible from any public domain. From the private domain it is envisioned that the only building the non-complying elements will be visible from is the taller Meriton development within the same street block. When visible from the Meriton development the views would be south-west over Pittwater Road and the eclectic roof streetscape of Dee Why. The roof elements would not be inconsistent with the general roof character of the town centre area. Thereby, the non-complying elements are largely not seen and, in the event that they are seen, they are generally compatible with other surrounding developments. It is found that the non-compliance does not result in adverse impact on the scenic quality of the Northern Beaches coastal and bushland environment.

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

Comment: The height and positioning of the protruding elements result in them being largely unseen from any surrounding location. It is not envisioned that the elements will be readily visible from any public places but, in the event that they are apparent from a distance, they will blend in with the greater town centre scenic vista and would likely be dwarfed by the height of the Meriton development.

**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 B4 Mixed Use zone.

The underlying objectives of the B4 Mixed Use zone

- ***To provide a mixture of compatible land uses.***

Comment: The proposal is for a shop top housing development that combines five retail spaces and residential accommodation above. The proposed uses of the development for these purposes is suitable within the context of the site and is compatible with surrounding developments.

- ***To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.***



Comment: The site is located in a prime position on a major road in close proximity to public transport, business premises, retail premises, community facilities and residential accommodation. These uses are all within a close distance to each other and, for some persons, the walking distance between developments would be shorter and easier than driving. Thereby it can be considered that the development is integrated within a town centre that encourages pedestrian mobility and that the development itself will contribute to the notion and importance of the town centre by virtue of the additional retail and residential opportunities presented.

- ***To reinforce the role of Dee Why as the major centre in the sub-region by the treatment of public spaces, the scale and intensity of development, the focus of civic activity and the arrangement of land uses.***

Comment: This matter is discussed in greater detail later in this report under Part G4, but in summary it is found that the development appropriately treats the site as an important block in the town centre context and arranges its land uses accordingly.

- ***To promote building design that creates active building fronts, contributes to the life of streets and public spaces and creates environments that are appropriate to human scale as well as being comfortable, interesting and safe.***

Comment: The development activates the entire Pittwater Road frontage and the majority of the Oaks Avenue frontage to a scale that is compatible with that of surrounding developments and thereby comfortable, interesting and safe for pedestrians. The active frontages of the retail premises and their small terrace areas will contribute to life on the streets and enhance the public domain.

- ***To promote a land use pattern that is characterised by shops, restaurants and business premises on the ground floor and housing and offices on the upper floors of buildings.***

Comment: The development proposes five retail premises located at ground floor and residential on the floors above. At this stage the specific uses of the retail premises is unknown, however any of them would be suitable for use as a shop, restaurant or business premises. Accordingly, the development satisfies this objective.

- ***To encourage site amalgamations to facilitate new development and to facilitate the provision of car parking below ground.***

Comment: The development proposes to have all of its car parking located in four levels of basement and has demonstrated that it can provide access points to basements of future development at 874 Pittwater Road.

**Is the variation to the development standard consistent with the objectives of Clause 4.6 of the WLEP 2011?**

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

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

Comment: The proposal seeks a variation to the Height of Buildings standard to allow for roof





elements that exceed the maximum permissible height. In the circumstances of this development it is found warranted to consider an appropriate degree of flexibility given that the non-complying elements will not give rise to any adverse amenity impact, will not be discernible from the public domain and will be compatible with other surrounding developments. Thereby utilising the mechanism offered by Clause 4.6 is considered to be warranted in this particular circumstance.

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

Comment: In the consideration of granting a variation to a development standard a consent authority must reasonably consider the impacts of the variation and whether it is worthwhile or justified to enforce strict compliance in order to achieve a better planning outcome. In this circumstances of this particular application it is found that enforcing strict compliance would mean either the deletion of the topmost floor of the building, or the deletion of the liftshaft servicing the topmost floor. Both of these alternatives are considered to be unreasonable as they would equate to either a development that is inconsistent with the envisioned scale and pattern of development of the site and the desired future character of the site, or would significantly inhibit the functionality and ergonomics of the building by virtue of having no lift to the top floor, potentially restricting certain persons with mobility impairments from being able to live in this space.

For the reasons stated throughout this consideration of a variation to the development standard it is found that a better planning outcome is achieved for and from the development by allowing flexibility to the Height of Buildings development standard to the magnitude of 2.9%.

(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: *Wehbe V Pittwater Council [2007] NSW LEC827 (Wehbe)* established that despite not meeting the numerical requirements of a development standard, a proposal may still achieve the objectives as is demonstrated above. In the circumstances of this particular case it is found that compliance with the development standard is both unreasonable and unnecessary.

It has been established that the portions of the building protruding beyond the maximum permissible height do not give rise to any adverse amenity impacts, nor are they for the purpose of increasing the yield of floor space for the development - rather the elements are composed only of lift overruns, clerestorey windows and building services (not including air conditioning units). By enforcing strict compliance with the development standard the building would be required to be reduced in height by 700mm, and the only pragmatic way of achieving this would be to delete a whole floor of the development. This is found to be unreasonable for such a minor variation





given that it would be inconsistent with the desired development outcome of this site envisioned by the planning controls, and that the scale of variation will be dwarfed by the 18 storey Meriton development that is located only 30m away.

It is unnecessary to enforce strict compliance with the development standard given the negligible amenity impacts that the encroaching elements has on surrounding lands, and by virtue of the consistency of the scale of the development in accordance with the current planning controls and objectives.

Thereby, in this assessment and in the applicant's written request to vary the standard it is found that there are sufficient environmental planning grounds to justify the contravention of the development standard in this particular circumstance. For reference, an excerpt from the applicant's *Clause 4.6 Exception to Development Standards* report by Hamptons Property Services is below:

*"45. Compliance with the standard is unreasonable and unnecessary (clause 4.6(3) (a)).*

*46. The grounds for establishing that strict application of a development standard is unreasonable and unnecessary in the context of a SEPP 1 objection are set out in Wehbe V Pittwater Council [2007] NSW LEC 827 (Wehbe) as follows:*

- (a) The objectives of the development standards are achieved notwithstanding the non-compliances.*
- (b) The underlying objectives or purposes of the standards are not relevant to the development with the consequence that compliance is unnecessary*
- (c) To establish that the underlying objective or purpose of the standard would be defeated if compliance was required and hence compliance would be unreasonable*
- (d) To establish that the development standard has been virtually abandoned or destroyed by Council's own decisions departing from the standard, and hence compliance with it is unreasonable and unnecessary*
- (e) To establish that the zoning of the particular land was an anomaly or inappropriate and as a result the development standard is also an anomaly and so compliance with it is unreasonable or unnecessary.*

*47. (a) and (b) are relevant.*

*48. In relation to (a), the express objectives of the standards are satisfied.*

*49. The proposal achieves the objectives being of a scale that is reflective of the varied character of development within the locality and is generally consistent with building height and form that is transpiring as a result of development standards pertaining to the Dee Why Town Centre which are encouraging a greater level of density as sites are redeveloped. Aside from the height non-compliance, the proposal is consistent with the prescribed planning controls, achieving a positive outcome consistent with the desired future character of the area.*

*50. While not as of right, these development standards have been utilised to ensure a built form that accords with the expectations of the standards and enables the proposal to make a positive contribution to reinforcing this role of this site within the Town Centre.*

*51. The effect of the non-compliance has no consequence to the site itself nor*



neighbouring properties.

52. Hence, compliance unnecessary.

53. The development meets the objectives of both the Height of Buildings development standard and the B4 Mixed use zone.

54. There is no public benefit in maintaining the standard. Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development as there is no consequential effect of complying with the development standard.

55. The scale of the development with the additional building height will not cause adverse consequence on the environment, nor surrounding road network.

56. It is therefore requested that the variation to the height control be supported as it is well within the public interest."

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

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

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

Comment: The applicant has submitted a Clause 4.6 Variation Request report that satisfactorily addresses the matters required to be demonstrated by subclause (3) as 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 B4 Mixed Use zone in the WLEP 2011.

**(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 where the variation to a numerical standard is not greater than 10%. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of Buildings Development Standard is assumed.

## **Warringah Development Control Plan**

### Built Form Controls

The site is not subject to any *Built Form Controls* pursuant to Part B of the WDCP 2011 as Page G *Special Area Controls* prevails and provides alternative built form requirements.



Accordingly, no further assessment is required on the clauses of Part B.

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes
Area 7 Pittwater Road	Yes	Yes

#### Detailed Assessment

##### C3 Parking Facilities

- To provide adequate off street carparking.

Comment: The development provides the following on-site car parking:

Use	Appendix 1	Required	Provided	Difference
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	Calculation			(+/-)
Shop top housing	1 space per 1 bedroom apartment	30 apartments x 1 = 30 spaces	54 spaces	+6 spaces
	1.2 spaces per 2 bedroom apartment	15 apartments x 1.2 = 18 spaces		
	1 visitor space per 5 apartments	45 apartments/5 = 9 spaces	8 spaces	less 1 space
Shop (retail/business component of shop top housing)	1 space per 16.4m <sup>2</sup> GLFA	GLFA 257.6m <sup>2</sup> = 15.7 spaces (16 rounded up)	17 spaces	+ 1 space
<b>Total</b>		73 spaces	79 spaces	+ 6 spaces

The development has a satisfactory quantum of car parking, however the distribution of spaces for allocation is not in accordance with the DCP requirements. The development has a shortfall of 1 visitor car parking space, however this minor variation is not considered to warrant the refusal of the application given the excess retail car parking spaces and the location of the site within the Dee Why Town Centre that is well serviced by public transport. Therefore, despite varying the standard of Appendix H the development is still found to provide adequate off street car parking.

- ***To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.***

Comment: The proposed vehicular entrance to the basement car parking levels is located on the south-eastern corner of the building on Oaks Avenue. The location of the driveway entrance is most suitable from a traffic engineering perspective and the width must remain to meet the relevant Australian Standards. The entry into the carpark is deep and recessive from the streetscape elevation that is considered a better solution than having a roller-door within sight from the street. Accordingly, it is found that the siting and design of the car park facilities have an acceptable visual impact on the street frontage and is therefore supported.

- ***To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.***

Comment: As above, the location of the driveway entrance is the most suitable and subtle entry point possible for the development. The design has included a concept plan for when the adjoining site at 874 Pittwater Road gets developed and shows that vehicular access to this site can be provided via the basement of the subject development site at 876. Accordingly, it is found that the development has taken all reasonable steps to ensure that its car parking facilities, and that of future adjoining developments have a minimal streetscape impact and are not visually dominating.

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



with the relevant objectives of WDCP 2011 and the objectives specified in section 1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### **D3 Noise**

The use of the site for the purpose of shop top housing is appropriate for the context of the site on Pittwater Road and within the town centre, and is considered to not give rise to any unreasonable nor adverse acoustic impacts upon surrounding properties.

### **D6 Access to Sunlight**

Development within any town centre must pay particular attention to solar access internally and at other surrounding sites. The subject site is no different to other town centre sites in that it is surrounded by a range of developments of varying height and scale.

The application and accompanying documentation demonstrates the magnitude of overshadowing that this development would cause on surrounding sites and streets at 9am, 12pm midday and 3pm on March 20th, June 21st and September 23rd. The overshadowing is most significant on the winter solstice (mid June).

The development does not overshadow any adjoining site to a quantum greater than what is permitted by the planning controls (Part D6 of the DCP), and the proposal has been designed in such a manner to reduce the impacts of overshadowing upon adjoining sites. The two most impacted sites are 874 Pittwater Road to the west and 10 Oaks Avenue to the east.

The adjoining building at 874 Pittwater Road is presently a two storey commercial building, and it can reasonably be assumed that this site will be developed for shop top housing in a similar fashion to this proposal in the future. Given the constraints of this site and the length of street frontage that it has, it can reasonably be assumed that the predominant outlook for a future development on this site would be towards the south and west, possibly with a lightwell in the north eastern corner.

Whilst the assessment of this application cannot predict what may happen on this adjoining site, it is found that the level of overshadowing proposed satisfies the control requirements and objectives at present, and does not unreasonably restrict the development potential of the site beyond what could be reasonably expected to be developed on the site. Additionally, given the orientation of the existing building and windows on the site, overshadowing caused by this subject development is unlikely to give rise to any unreasonable impacts.

10 Oaks Avenue to the east is irregular in that it has openings to the eastern and western side boundaries whereas most surrounding developments have sheer walls on the side to abut future developments. The form of 10 Oaks Avenue is stepped inwards and upwards. The subject development has responded to the unusual configuration of 10 Oaks Avenue by having a large open courtyard in the north eastern corner which not only contributes to a better outlook, but creates a void to allow for light penetration into the apartments of No. 10. The design as proposed only overshadows the south-western corner of the adjoining site at 3pm in mid-winter.

The design overall is considered to be successful by virtue of the architecture proposed and the minimal overshadowing impacts that the development has upon adjoining sites within a dense town centre area.

### **D7 Views**





The proposed development will be visible from many surrounding and distant properties given the topography of Dee Why and the surrounding locations. Despite being visible, it is not considered that the development would have any unreasonable nor detrimental impact on the existing provision of views enjoyed by surrounding properties, particularly those views of *value* as defined in the Planning Principle of *Tenacity Consulting v Warringah Council (2004) NSWLEC 140*.

The development is bound by equally, if not greater scale development that achieves a height significantly higher than the proposed development. In essence, any existing provision of valuable views (i.e. of the ocean and beach) from westward properties would have likely been significantly obstructed or obliterated in such a manner that the magnitude of view loss that would be caused by this development would be negligible to minor. It should be noted that in assessing provision of views, no submissions have been received regarding view loss which is considered reasonable given the realistic expectation of the development potential of the subject site.

However, it is acknowledged that the proposed development will, to an extent, 'box-in' the existing development of No. 10 Oaks Avenue by virtue of their non-conforming architecture that doesn't concede to the setbacks and design philosophy of recent surrounding developments. The predominant impact of this development upon No. 10 Oaks Avenue is considered to be solar access (as noted in the submissions received) and not view loss - as the existing westward views from this property are over the roof of the subject development site and, at best, could be quantified as district views.

Accordingly, it is not found that the development gives rise to any unreasonable nor detrimental view loss.

#### **D10 Building Colours and Materials**

The development incorporates a visually interesting and aesthetically pleasing facade comprised of glazing, precast concrete panels of varying finish and colour, composite faux bamboo screening and faux timber wall cladding. In addition, the proposal incorporates gardens at the podium level that, upon maturity, will be readily visible from the public domain and will soften the overall scale of the development.

In the assessment on this application particular consideration was given to the planar walls of the development, predominantly those bordering 874 Pittwater Road and 10 Oaks Avenue. These walls will be visible until both of the adjoining sites are redeveloped to a scale envisaged by the current planning controls and accordingly, it is deemed necessary to be satisfied that the material selection of the precast concrete panels provides visual interest in the interim without impeding on the developmental ability of the adjoining sites.

The solution proposed in the application includes a series of patterned precast concrete panels intermixed within the planar facade. Whilst this by no means can mitigate the scale of these exposed walls, it does significantly enhance the visual impact of the building and contributes to the development being of a greater visual interest when viewed from the public domain and surrounding sites. The selected finishes are not considered to impede on the ability for adjoining sites to develop in a similar fashion.

Contextually within a town centre environment, the building colours and materials proposed as a part of this development are considered to be of a high quality and satisfy this requirement.

#### **Area 7 Pittwater Road**

The site is subject to the requirements of Part G *Special Area Controls* of the WDCP 2011. Specifically, the site is identified as being with Part G1 *Dee Why Mixed Use Area* and accordingly, the following





requirements are applicable to the site.

- ***Entry to the area will be marked by a building at the southern corner of the intersection of Dee Why Parade and Pittwater Road. The scale and architectural treatment of this building will distinguish it from other buildings and define the edge of the town centre.***

Comment:

This control is not applicable to the development site as the allotment is bound by Pittwater Road and Oaks Avenue and is two streets south of Dee Why Parade.

Accordingly, no further assessment of this requirement is necessary in this circumstance.

- ***Buildings are to define the streets and public spaces and create environments that are appropriate to the human scale as well as comfortable, interesting and safe. In particular, future development is to ensure that a 4 storey podium adjoins the sidewalk and establishes a coherent parapet line along Pittwater Road. Above the parapet line additional storeys will be set back to maintain solar access to the sidewalks and ensure that the scale of buildings does not dominate public spaces. Building facades are to be articulated in such a way that they are broken into smaller elements with strong vertical proportions and spaces created between buildings at the upper levels to add interest to the skyline, reduce the mass of the building and facilitate the sharing of views and sunlight.***

Comment:

The development has incorporated setbacks to the podium levels and the tower levels in accordance with the requirements of the planning controls which contribute to the development being of a scale that is not inconsistent with surrounding developments nor imposing upon pedestrians in the public domain surrounding the development. The overall architecture of the development will create visual interest and will enhance the aesthetic of the site, particularly when driving northwards on Pittwater Road, or walking westward on Oaks Avenue. The building also creates an appropriate 'benchmark' for the quality of development expected for the redevelopment of surrounding properties.

The upper levels of the building are recessed from the podium level as required, but they are not *broken into smaller elements* as this is considered to be an unreasonable objective for a site of this size. It is interpreted that the goal of this objective is to have slim-line towers in the town centre, however this would significantly reduce the development potential of the site and apartment yield and therefore, without dispensation to the building height control, would make developing this site unfeasible.

Accordingly the development as proposed satisfies this requirement.

- ***The overall height of buildings is to be such that long distance views of Long Reef Headland, the top of the escarpment to the west of Pittwater Road and the Norfolk Island Pines next to Dee Why Beach are preserved.***

Comment:

The height of the proposed development is generally consistent with the relevant planning controls and what is envisioned by them for development on the site. Longreef Headland is located north-east of the site, and therefore any views of the headland from surrounding sites would have already been



obliterated by the Meriton development behind the subject development site, therefore it can be reasonably considered that the height of the development doesn't obscure any existing views of Longreef Headland further than they already are.

- ***Site amalgamation will be encouraged to facilitate new development and enable all carparking to be provided below ground or behind buildings using shared driveways where possible.***

Comment:

The amalgamation of the four allotments that make up nos. 874 and 876 Pittwater Road would provide for a larger development site and, arguably, better development potential for each allotment. The applicant has demonstrated that they have been unsuccessful in purchasing the adjoining property for the purposes of this development.

The principles set out by Brown. c in the Land and Environment Court Case *Melissa Grech v Auburn Council [2004] NSWLEC 40* require that the developer of a property must make reasonable and genuine attempts to purchase adjoining land that could become isolated by this development. In this particular circumstance the owner of No. 876 has approached the owner of No. 874 in an attempt to purchase the land, however attempts have been unsuccessful (as evidenced in the documentation submitted accompanying the application).

Given that purchasing the adjoining land has failed, the NSWLEC decision of *Cornerstone Property Group v Warringah Council [2004] NSWLEC 189* requires that it be demonstrated that both two sites can achieve development that is consistent with the planning controls.

The documentation accompanying the application demonstrates a conceptual proposal of how the adjoining site could be developed in a manner and fashion similar to that of the subject development site. In order to future proof No. 874 in accordance with the planning controls and the desire to have have no additional vehicular crossings onto Pittwater Road or Oaks Avenue, the recommendation of this report includes a condition that requires vehicular a right of access (through-site vehicle link) be created to provide access to the adjoining site when it is developed.

- ***Building layout and access are to be in accordance with the Build To Lines and Central Courts map. Shared laneways are to be established to ensure there is no vehicle access directly from Pittwater Road. The spaces behind buildings combine to form central courts with vehicle access limited to a restricted number of places.***

Comment:

The development as proposed complies with the Build To Lines and has no requirements pursuant to the Central Courts map (although the development does incorporate a large courtyard beyond the street facade). The building does not propose any vehicular access directly from Pittwater Road and has demonstrated that future development on adjoining sites can gain access to their basement carparks through the subject development basement, as reinforced by conditions of consent in the recommendation of this report.

- ***Buildings are not to exceed 6 storeys north of the intersections of Fisher Road and Pacific Parade with Pittwater Road, and are not to exceed 5 storeys south of these intersections.***





Comment:

The site is subject to a building height control under the WLEP 2011 which is the prevailing EPI which re

The development complies (in general) with the height of buildings and is therefore considered to satisfy

Greater detailed discussion can be found earlier in this report which addresses building height.

- ***The maximum area of the floorplate of the upper floors of buildings is to be in accordance with the Build To Lines and Central Courts map as follows:***

- ***above the topmost storey (including plant and equipment rooms, lofts etc):***  
***30% of the area of the ground floor floorplate;***
- ***topmost storey: 50% of the area of the ground floor floorplate; and***
- ***second topmost storey: 70% of the area of the ground floor floorplate .***

Comment:

The development does not strictly comply with the requirements on this clause. The roof of the building (above the topmost storey) has plant equipment that totals 5% of the ground floor plate, thereby satisfying this requirement. The topmost storey has an area of 54% of the ground floor plate equating to a deviation to the control of 4%. The second topmost storey has an area of 54% of the ground floor plate, thereby satisfying this requirement.

The topmost floor of the development is larger than what is envisioned by this control, however the variation sought is considered to be contextually appropriate for the scale of development and no discernible difference would exist if the building were to be made to comply with this requirement. Therefore, on merit, the proposal is considered satisfactory given the variation is only minor and that the development as a whole complies with the Build To Lines and, generally complies with the Height of Buildings control.

- ***The minimum floor to ceiling height are as follows:***

- ***ground floor storey: 3.6 metres;***
- ***upper storeys: 2.7 metres.***

Comment:

The development provides satisfactory floor to ceiling heights for all levels of the proposal and therefore

- ***Build-to lines have been established to ensure future development defines the streets and public spaces.***

***For the first 4 storeys of buildings, build-to lines have been set at:***

- ***5 metres from the kerb for the first 4 storeys; and***
- ***9 metres from the kerb for storeys above the fourth storey, except:***
- ***At the southern end of the intersection of Sturdee Parade and Pittwater Road as indicated on the Build To Lines and Central Courts map as follows, where the build-to line is the front property boundary for the first four storeys and 5 metres from the kerb for storeys above the fourth storey,***





Comment:

The development provides satisfactory build-to-lines in accordance with the requirement and is therefore

- ***Car parking facilities must be provided below ground or behind buildings in shared parking areas. Ground level parking must be provided with trees that will have a mature canopy coverage of 70% over the area.***

Comment:

All car parking associated with the development is located in four levels of basements, and therefore sat

Additional to meeting the above requirements, the development is also required to satisfy the control objectives:

- ***Development will reinforce the Dee Why Town Centre as the focus of regional activity and will be reflected in the treatment of public spaces, the arrangement of land uses and the scale and intensity of development.***

Comment: The arrangement of land uses proposed in this development is consistent with what is permitted on the site and through the WLEP definition of *shop top housing*. The assessment of this application for the construction of the building as a whole cannot envision what the uses of the five ground floor retail spaces could be, but it can however be reasonably assumed that the uses could be composed of cafes, restaurants, bars, banks, real estate agencies, small shops and the like. These potential uses would be subject to future applications and would contribute to reinforcing Dee Why Town Centre as the focus of activity within the Northern Beaches.

The treatment of the public spaces fronting the retail outlets is inviting and allows for natural lighting and outdoor furniture placement / displays to further activate the street frontage.

In the wider Dee Why Town Centre context, the central Meriton development is (at present and likely in the future) the largest development by virtue of height and land size and provides the highest density of land uses to reinforce the focus of activity, and therefore this current subject development located south of the Meriton development will provide a good transition between the 'hub' of Dee Why and then 'greater' Dee Why to the south.

Accordingly, it is found that the development satisfies this objective.

- ***To encourage good design and innovative architecture.***

Comment: The design and architecture of the proposed development is interesting and compatible with other recent developments in the wider Dee Why area, particularly along the Pittwater Road corridor. The design is considered to be technically good by virtue of its predominant compliance with all the relevant planning controls, but is also considered to be aesthetically good design as it is composed of varying elements, colour and textures at different setbacks to create a dynamic facade and pedestrian experience. The opportunities for landscaping both in the central courtyard and at the podium level terraces will significantly enhance the streetscape appeal, particularly when viewed from a distance. The incorporation of patterned precast concrete panels interspersed on the walls of the development abutting adjoining sites will contribute to creating a more visually interesting building and streetscape as an interim solution until adjoining sites are redeveloped and cover these panels in a fashion



similar to that being proposed by this development.

On merit, the development is considered to be an enhancement to the streetscape and greater Dee Why area and thereby satisfies this objective.

- ***To ensure shops and dwellings enjoy good access to natural light.***

Comment: Given the orientation of the building and the contextual surroundings of the development site it was inevitable that shop and retail development at ground floor would be unlikely to receive any direct natural sunlight given their due south orientation to Oaks Avenue. Despite not receiving any direct natural sun, it is found that the design has accommodated the ground floor retail spaces in a manner that allows them to harness natural light given their tall floor-to-ceiling heights and openness to the street. In this regard the development is no different to any other in a town centre context that faces due south. The shops fronting onto Pittwater Road will receive a good provision of afternoon sun and, given the width of the adjoining road, ample natural light throughout the day.

The residential dwellings achieve a satisfactory provision of sunlight in accordance with the requirements of the DCP, despite being somewhat constrained by the existing development in the area.

- ***To ensure buildings have an active street frontage.***

Comment: The proposed development site is located in a highly prominent position within the Dee Why Town Centre, albeit that the corner allotment is excluded from this proposal. The development has two street frontages of differing hierarchical importance within the context of the town centre. The Pittwater Road frontage consists of three retail premises of between 50m<sup>2</sup> - 68m<sup>2</sup> which are capable of providing an array of uses to serve the community. On this particular street frontage it is not considered to be a particularly desirable location for food and drink premises as the outdoor seating areas would be acoustically impacted by the traffic noise of the road. Despite this inconvenience, the design of the proposal has 'future-proofed' the three retail premises to include a small covered terrace area addressing Pittwater Road which could, although not an ideal location, be used for outdoor seating.

Contrary to the Pittwater Road frontage, the secondary frontage of the development site to Oaks Avenue (to the south) is considered highly appropriate and desirable to have food and drink outlets that address the street and road reserve and provide outdoor seating to improve the connection with the public space and the private development. The proposal has two smaller retail premises facing onto Oaks Avenue with a large terraced area facing Oaks Avenue. Similar to other food and drink premises on Oaks Avenue, it is anticipated that there would be a high demand for the use of this space which would in turn activate the street frontage and enhance the level of vibrancy within the Town Centre. The two retail premises proposed on this frontage are considered to be appropriate and highly desirable.

It is noted that approximately 50% of the Oaks Avenue is used for driveway access and ramps into the development which do not particularly contribute to an 'active street frontage,' however these elements of the building are inevitable within the context of a major development like this and are far better suited to be located off of Oaks Avenue than Pittwater Road. Accordingly, despite the whole development not strictly meeting this objective, it is considered that the proposal provides a desirable quality and reasonable quantum of street activation that meets the reasonable expectations of this development.





Additionally, the site is acknowledged to somewhat isolate the development potential of the adjoining corner allotment 874 Pittwater Road. The application is buttressed by documentation that reasonably demonstrates that this site could be developed in the future by utilising vehicular access via the basement of the subject development site, thereby reducing the requirement for additional driveway crossings into Oaks Avenue. Whilst not strictly under assessment in this application, this conceptual schematic of how the adjoining site could be redeveloped provides opportunities for the entire street frontage of 874 Pittwater Road to be shop frontages and active. Given that 874 is a far more prominent site than the subject development site, it is considered important to ensure that any site isolation won't unreasonably impact on that site's ability to satisfy this objective. The proposal appropriately ensures this and thereby, for the assessment of this current DA, satisfies this objective.

- ***To create an environment that is human in scale as well as comfortable, interesting and safe.***

**Comment:** The Dee Why Town Centre redevelopments pose a scale of building that has not before been seen in the vicinity and it is important that, whilst the scale of development increases, that the contrasting human scale is maintained in an appropriate form. The provision of a podium level contributes to achieving a lesser 'dominating' effect of the development (as opposed to there being no podium level), but this only has impact when approaching the site along Oaks Avenue and, to a lesser degree, Pittwater Road.

The actual building frontages themselves and the associated road reserves have been designed in a manner that is sensitive to human scale as well as being comfortable, interesting and a safe environment for pedestrians. The provision of large awning that shares the same ceiling height as the adjoining retail premises and overhangs Council's road reserve serves multiple purposes including weather protection, visual articulation and it also reduces the overall scale of development for pedestrians. Once under the awning structure, one will not be able to depict the scale of the development by virtue of height, and all that will be immediately evident is the retail spaces located at ground level of the development.

Most importantly, the proposed development must be designed in a fashion that is similar to other surrounding developments and their treatment of scale. The form that is proposed is consistent with what is envisioned by the planning controls and what is expected of other surrounding sites upon their redevelopment and accordingly, it is concluded that the development as proposed satisfies this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WDCP 2011 and the objectives specified in s.1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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





## POLICY CONTROLS

### Warringah Section 94A Development Contribution Plan

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

The following monetary contributions are applicable:

Warringah Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 13,000,000		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 123,500
Section 94A Planning and Administration	0.05%	\$ 6,500
Total	1%	\$ 130,000

## CONCLUSION

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

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

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

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

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

The assessment of this application has found that the proposed development is an appropriate solution for the site within the context of Dee Why and the emerging town centre. The scale of the development is commensurate to that of other shop top housing developments within the vicinity and has innovatively responded to the constraints that this site affords, namely being the predominant southern orientation, the unusual configuration of the adjoining development to the east and the undeveloped allotment to



the south west.

The architectural response to the prevailing planning controls has resulted in a modern and aesthetically pleasing development that contributes to the vibrancy of the streetscape from a pedestrian level and enhances the visual impact of the site and surrounding developments when viewed from a wider context.

The development for the purpose of shop top housing is an appropriate response to the needs of the community and the hierarchy of land uses that stem from the core of the Dee Why Town Centre redevelopment. The five retail spaces proposed are scaled and composed in such a manner that their use could be versatile and interchangeable to meet the evolving needs of the community.

In summary, this report has demonstrated that the development meets the objectives and intents of all the prevailing planning controls and is consistent with what could reasonably be expected to be developed on the site. This report concludes that the development proposed is worthy of approval by Northern Beaches Local Planning Panel on the premise of the social, economic and aesthetic value it would bring to Dee Why and the greater community. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2017/1063 for Demolition works and construction of a shop top housing development on land at Lot 3 DP 9900, 876 Pittwater Road, DEE WHY, Lot 4 DP 9900, 876 Pittwater Road, DEE WHY, Lot 2 DP 9900, 876 Pittwater Road, DEE WHY, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

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

#### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A100 Issue C	15 March 2018	Crawford Architects
A101 Issue C	15 March 2018	Crawford Architects
A102 Issue C	15 March 2018	Crawford Architects
A103 Issue C	15 March 2018	Crawford Architects
A104 Issue C	15 March 2018	Crawford Architects
A105 Issue C	15 March 2018	Crawford Architects
A106 Issue D	15 March 2018	Crawford Architects
A107 Issue D	15 March 2018	Crawford Architects
A108 Issue D	15 March 2018	Crawford Architects
A109 Issue D	15 March 2018	Crawford Architects



A110 Issue D	15 March 2018	Crawford Architects
A111 Issue B	15 March 2018	Crawford Architects
A201 Issue C	15 March 2018	Crawford Architects
A202 Issue C	15 March 2018	Crawford Architects
A203 Issue C	15 March 2018	Crawford Architects
A204 Issue C	15 March 2018	Crawford Architects
A205 Issue B	15 March 2018	Crawford Architects
A210 Issue B	15 March 2018	Crawford Architects
A300 Issue C	15 March 2018	Crawford Architects
A301 Issue C	15 March 2018	Crawford Architects
A302 Issue B	15 March 2018	Crawford Architects
A303 Issue C	15 March 2018	Crawford Architects

**Reports / Documentation – All recommendations and requirements contained within:**

Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 861253M	12 October 2017	O'Toole Town Planning P/L
BCA Assessment Report Rev. 108527-BCA-r2	21 September 2017	BCA Logic Pty Ltd
Statement of Compliance - BCA Access Provisions	11 September 2017	Accessible Building Solutions
Flood Risk Management Report Issue A	16 October 2017	Demlakian Consulting Engineers
Preliminary Geotechnical Report - 4495-R1 Rev. 1	24 October 2017	Asset Geotechnical Engineer Pty Ltd
Preliminary Site Investigation	27 October 2017	Aargus
Revised Assessment of Traffic and Parking Implications (Rev. D) - 15085	October 2017	Transport and Traffic Planning Associates
Construction Traffic Management Plan	27 September 2017	SBMG Planning

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
000 Issue A	18 September 2017	Site Image Landscape Architects
101 Issue A	18 September 2017	Site Image Landscape Architects
102 Issue A	18 September 2017	Site Image Landscape Architects





103 Issue A	18 September 2017	Site Image Landscape Architects
501 Issue A	18 September 2017	Site Image Landscape Architects
502 Issue A	18 September 2017	Site Image Landscape Architects
503 Issue A	18 September 2017	Site Image Landscape Architects

Waste Management Plan		
Report Title	Dated	Prepared By
Waste Management Plan	October 2017	Crawford Architects

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

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

**2. Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- o The street awning along Oaks Avenue is to be extended in length to the easternmost edge of the site at the same kerb alignment as shown in the Stamped Plans.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	15 November 2017
Roads and Maritime Services	RMS Referral Response	1 December 2017
Water NSW	Water NSW General Terms of Approval	10 April 2018

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

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other Department, Authority or Body's.

**4. Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as



detailed on the approved plans for any land use of the site beyond the definition of shop top housing.

Shop top housing is defined as:

*"Shop top housing means one or more dwellings located above ground floor retail premises or business premises."*

(development is defined by the Warringah Local Environmental Plan 2011 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

#### 5. 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.

#### 6. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is





required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

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

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage



system in sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

#### 7. Temporary Dewatering

Discharge must achieve the following water quality targets in addition to any conditions/documentation of this consent, any requirements of the General Terms of Approval/Controlled Activity permit issued by DPI Water, and legislation including *Protection of The Environment Operations Act 1997* and *Contaminated Lands Management Act 1997*.

Parameter	Criterion	Method	Time Prior to Discharge
Oil and grease	None visible	Visual inspection	<1 hour
pH	6.5- 8.5	Probe/meter	<1 hour
Total Suspended Solids (TSS)	<50mg/L	Meter/grab sample measured as NTU	<1 hour

*Note: The correlation between NTU and TSS must be established by a NATA accredited laboratory prior to the commencement of dewatering activities.*

Dewatering to the stormwater system must not occur until the above water quality parameters and any requirements under the Environmental Management Plan are met.

All records of water discharges and monitoring results are to be documented and kept on site.

Copies of all records shall be provided to the appropriate regulatory authority, including Council, upon request.

Tailwater must be discharged to a stormwater pit and not spread over any road, footpath and the like.

Reason: Protection of the receiving environment

### FEES / CHARGES / CONTRIBUTIONS

#### 8. Policy Controls

Northern Beaches Council Section 94A Development Contribution Plan

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

The following monetary contributions are applicable:

Northern Beaches Council Section 94 Development Contributions Plan	
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Contribution based on a total development cost of \$ 13,000,000.00		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 123,500.00
Section 94A Planning and Administration	0.05%	\$ 6,500.00
Total	1%	\$ 130,000.00

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

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

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

#### 9. Security Bond

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

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

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

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

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

#### 10. Works Bonds

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

A Bond of \$10,000 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent.

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

A Bond of \$100,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, streetscape (tree plantings, street furniture, etc) and any footpath works required as part of this consent.

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





A Bond of \$5,000 as security to ensure that there is no transmission of material, soil etc off the site and onto the public road and/or drainage systems.

(d) Construction, Excavation and Associated Works Bond (Failure to Remove Waste)

A bond of \$5,000 as security against damage to Council's road(s) fronting the site caused by the transport and disposal of materials and equipment to and from the site.

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

The developer/applicant must lodge with Council a Maintenance Bond of \$5,000 for the construction of civil and streetscape work on the public roadway. The Maintenance Bond will only be refunded on completion of the Maintenance Period, if work has been completed in accordance with the approved plans to the satisfaction of Council.

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

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

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

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

Reason: To ensure adequate protection of Councils infrastructure. (DACENZ01)

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

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

Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Warringah Council's "On-site Stormwater Detention Technical Specification" and the concept drawing by Demlakian Engineering, drawing number 217130 SW00 P2, SW01 P1, SW02 P3, SW03 P1, SW04 P3, SW05 P1 dated 07.03.18.

Certification by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering stating the stormwater drainage design and plans are in accordance with Council's "On-site Stormwater Detention Technical Specification" and all requirements of this condition.

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

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development. (DACENC03)

12. **Submission Roads Act Application for Civil Works in the Public Road**

An Application for Works to be approved within Council Roadway, including engineering plans is to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The application is to include four (4) copies of Civil Engineering plans for the



design and construction of the full width concrete footpath along Pittwater Road and Oaks Avenue frontages, kerb and gutter re-construction in Oaks Avenue, driveway crossing, stormwater drainage pit and pipeline to connect to Council's trunk drainage pipeline in Oaks Avenue, any streetscape works (including street furniture, tree plantings, etc) as required in Council's approved Tract Streetscape plans and associated works which are to be generally in accordance with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and Council's specifications.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. An approval is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To provide public and private safety.

13. **Waterproofing/Tanking of Basement Level**

The basement area is to be permanently tanked or waterproofed. Details of the waterproofing/tanking are to be prepared by a suitably qualified Engineer.

Where dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Department of Primary Industries - Water. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Department of Primary Industries - Water are to be complied with and a copy of the approval must be submitted to the Certifying Authority.

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

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements. (DACENC14)

14. **Contaminated Land Requirements**

Prior to the issue of any Construction Certificate a Contamination Management Plan is to be prepared by an appropriately qualified Environmental Consultant and provided to the satisfaction of the Certifying Authority. The plan shall detail:

- a) How all the requirements and / or recommendations contained within the Contamination Reports Preliminary Site Investigation, reference No. ES6395/2 dated 27 October 2017 are to be implemented;
- b) A Remedial Action Plan (RAP) prepared by a suitably qualified Environmental Consultant in accordance with State Environmental Planning Policy No. 55 - Remediation of Land, and with any contaminated land planning guidelines under the Contaminated Land Management Act 1997;
- c) Stipulate reporting and processes associated with discovery of any new contamination that is revealed during excavation, demolition or development works. This process shall include the ability to contact NSW Fire and Rescue for pollution incidents, have on call (24 hours a day), a suitably qualified Environmental Consultant to undertake immediate investigations and provide recommendations for containment and rectification of contaminants or toxins and a process for notification to Northern Beaches Council and the Principal Certifying Authority;
- d) To ensure water quality is maintained runoff must be drained to an adequately bunded central collection sump and treated, to meet NSW Department of Environment and





Climate Change (formerly Environment Protection Authority) discharge criteria.

**Note:** Other options for the disposal of excavation pump-out water include disposal to sewer with prior approval from Sydney Water, or off-site disposal by a liquid waste transported for treatment/disposal to an appropriate waste treatment/processing facility.

e) All stockpiles of potentially contaminated soil must be stored in a secure area on the site (no greater than 48 hours) so as not to cause pollution or public health risk until disposed of at a waste facility.

All contaminated soil removed from the site must be disposed of at a waste facility that can lawfully receive that waste and must be done in accordance with all relevant Acts, Regulations and Guidelines. Copies of all test results and disposal dockets must be retained for at least 3 years and be made available to authorised Council officers on request.

**Note:** The following Acts and Guidelines applied at the time of determination:

- i) Protection of the Environment Operations Act 1997; and
- ii) Environment Protection Authority's Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes (1999).
- f) Hazardous or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of WorkCover NSW and the Environment Protection Authority and the provisions of all relevant Acts, Regulations and Guidelines.

**Note:** The following standards applied at the time of determination:

- i) Environment Protection Authority's Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes (1999).
- g) Stipulate protocols for the importation of any landfill material onto the site the protocols shall include:
  - o 'Chain of Custody' documentation shall be kept and submitted for the transport of the validated fill material from the nominated reputable fill location to the subject premises.
  - o Requirement that any landfill material being brought to the site shall be free of contaminants or toxins and shall suitable for the use on the land.
  - o Any landfill material being brought to the site shall have a validation report prepared to the satisfaction of the Principal Certifying Authority (prepared in accordance with the Department of Environment & Climate Change's guidelines).

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

Reason: Protection of the environment, SEPP 55 compliance.

#### 15. **Environmental Management Plan**

An Environmental Management Plan (EMP) shall be prepared for the approved development.

The plan shall be prepared by a suitably qualified person and shall be to the satisfaction of Council prior to the issue of the Construction Certificate and shall address:

Risk assessment of all Environmental Aspects and impacts to site and other potentially impacted properties.

The impacts must at minimum consider the following areas:





- Hazardous Substances
- Water
- Air
- Noise
- Vibration
- Waste & Litter
- Land
- Community
- Environmental Protection objectives and control strategies
- Environmental conditions using measurable indicators and standards
- Emergency Response Plan
- Environmental monitoring and reporting plan

Reason: To ensure the appropriate operation and management of the approved use.

16. **On slab landscape planting and associated works**

- a) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing to all internal walls and slab, and drainage of the concrete slab over which soil and planting is being provided.
- b) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil volume, soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.
- c) A Landscape Plan shall be submitted including details of minimum soil depths for the intended planting species.

Reason: To ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system, and away from habitable areas. (DACLACPCC1)

17. **Flood**

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

**Building Components and Structural Soundness – C1**

All new development shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

**Building Components and Structural Soundness – C2**

All new development must be designed and constructed to ensure structural integrity up to the Flood Planning Level taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion. Structural certification shall be provided confirming the above.

**Building Components and Structural Soundness – C3**

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level.

**Storage of Goods – D1**

Hazardous or potentially polluting materials shall not be stored below the Flood Planning Level unless adequately protected from floodwaters in accordance with industry standards.

**Floor Levels – F1**



New floor levels within the development shall be set at or above the relevant Flood Planning Level.

**Car parking – G3**

All access, ventilation and any other potential water entry points, including entry ramp crests to the basement car park shall be at or above the Flood Planning Level.

**Recommendations**

The development must comply with all recommendations outlined in:

- The Flood Management Report prepared by Demlakian Consulting Engineers dated 16 October 2017.

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

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

18. **Compliance with Standards**

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

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

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

19. **Sewer / Water Quickcheck**

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

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

20. **Dilapidation Report**

A photographic survey of adjoining properties within 20m of the excavation perimeter detailing the physical condition of those properties, both internally and externally, including such items as walls, ceilings, roof, structural members and other similar items, shall be submitted to the Council and the Private Certifying Authority prior to the issue of a Construction Certificate for record keeping purposes. This survey is to be prepared by an appropriately qualified person.

On completion of the excavation and building works and prior to occupation of the building, a certificate prepared by the appropriately qualified person to the effect that no damage has resulted to adjoining premises, is to be provided to the Council and the Principal Certifying





Authority.

If damage is identified by the appropriately qualified person which is considered to require rectification, the damage shall be rectified or a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible and prior to a final Occupation Certificate being issued.

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

In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant must demonstrate, in writing, to the satisfaction of the Private Certifying Authority that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed.

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

**21. Visitor Spaces Located Behind Security Shutter/Door**

The installation of any security roller shutter for parking areas shall not restrict access to any designated visitor car parking space. In the event that the approved visitor car parking spaces are located behind any proposed security roller shutter or boom gate, an intercom system is required to be installed to enable visitor access into the basement car parking area. This requirement is to be reflected on the Construction Certificate plans and any supporting documentation for the endorsement of the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure visitor car parking is accessible to visitors.

**22. Waste and Recycling Requirements**

Details demonstrating compliance with Warringah Development Control Plan – Part C9 Waste Management, including the required Warringah Waste Management Plan, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with Warringah Development Control Plan – Part C9 Waste Management, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.  
(DACWTC01)

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

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

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





the entire period that the works are being undertaken on public land.

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

24. **Tree protection**

- (a) Existing trees which must be retained
  - i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
  - ii) Trees located on adjoining land
- (b) Tree protection
  - i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
  - ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.
  - iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
  - iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
  - v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

25. **Construction Traffic Management Plan**

A construction traffic management plan (CTMP) which addresses construction vehicle access to and from the site during demolition, excavation and construction must be provided for Council's consideration. Where it is intended to operate traffic control the construction management plan is to provide a traffic management plan authorised by a suitably qualified individual in accordance with the RMS traffic control at worksites manual.

Reason: To ensure works vehicles do not impact on parking, traffic flows and pedestrian thoroughfares.

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

26. **Property Boundary Levels**

The property boundary levels shall match the existing levels except where modified for the vehicular crossing. The applicant shall design and construct having regard for the existing levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

Reason: To maintain the existing profile of the nature strip/road reserve. (DACENE01)

27. **Stormwater Pipeline Construction**

Where connection to Council's nearest stormwater drainage system is required, being in Oaks Avenue the applicant shall construct the pipeline in accordance with Council's specification for



engineering works (see [www.warringah.nsw.gov.au](http://www.warringah.nsw.gov.au)) and shall reconstruct all affected kerb and gutter, bitumen reinstatements, adjust all vehicular crossings for paths, grass verges and household stormwater connections to suit the kerb and gutter levels. All works shall be undertaken at the applicant's cost, and upon completion certified by an appropriately qualified and practicing Civil Engineer.

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

Reason: To ensure compliance of drainage works with Council's specification for engineering works. (DACENE03)

28. **Civil Works Supervision**

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

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

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

29. **Maintenance of Road Reserve**

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

Reason: Public Safety. (DACENE09)

30. **Notification of Inspections**

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- (a) Installation of Silt and Sediment control devices
- (b) Prior to backfilling of pipelines
- (c) Prior to pouring of stormwater gully pits
- (d) Prior to pouring of kerb and gutter
- (e) Subgrade level / basecourse level
- (f) Sealing road pavement

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification. Council approval or acceptance of any stage of the work must be obtained in writing, and will only be issued after completion of the work to the satisfaction of Council and receipt of the required certification.

Reason: To ensure new Council infrastructure is constructed to Council's requirements. (DACENE10)

31. **Traffic Control During Road Works**

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



Reason: Public Safety. (DACENE11)

32. **Waste Management During Development**

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

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

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

33. **Compliance with the Contamination Management Plan**

The requirements of the Contamination Management Plan required by this consent are to be fully implemented from commencement of any excavation, demolition or development works until the issue of any interim / final occupation certificate.

Reason: Protection of the environment, SEPP 55 compliance. (DACHPEDW1)

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

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Council's Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

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

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

35. **Waste/Recycling Requirements (Waste Plan Submitted)**

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

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

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

36. **Authorisation of Legal Documentation Required for On-site Stormwater Detention**

The original completed request forms (Department of Lands standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works.

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

Reason: To create encumbrances on the land. (DACENF01)

37. **Registration of Encumbrances for On-site Stormwater Detention**

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





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

Reason: To identify encumbrances on land. (DACENF02)

38. **Reinstatement of Kerb**

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

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

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

39. **Restriction as to User for On-site Stormwater Detention**

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such restriction.

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 modification to the on-site stormwater detention structure is not carried without Council's approval. (DACENF04)

40. **On-Site Stormwater Detention Compliance Certification**

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans.

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 stormwater disposal is constructed to Council's satisfaction. (DACENF10)

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

A Positive Covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the property title to ensure the on-going maintenance of the stormwater pump-out facilities on the property being developed.

Warringah Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Warringah Council's delegate shall sign these documents prior to the submission to the Land & Property Information Department.

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



Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard. (DACENF11)

42. **Positive Covenant for On-site Stormwater Detention**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Warringah Council's delegate prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

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

Reason: To ensure ongoing maintenance of the on-site stormwater detention system. (DACENF12)

43. **Creation of Positive Covenant and Restriction as a User**

Where any conditions of this Consent require the creation of a positive covenant and/or restriction as a user, the original completed request forms, (Department of Lands standard forms 13PC and/or 13RPA), shall be submitted to Warringah Council for authorisation.

A certified copy of the documents shall be provided to Warringah Council after final approval and registration has been affected by the "Department of Lands".

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Interim / Final Occupation Certificate.

Reason: To identify encumbrances on land. (DACENF14)

44. **Validation for Remediation**

A validation and site monitoring report, including a survey of all sites used for landfill disposal is to be prepared in accordance with relevant guidelines issued under the Contaminated Land Management Act 1997 must be submitted to the Council within one month from completion of the remediation work.

The plan must identify the extent and depth of all fill material in relation to existing roadways and buildings. The survey must also include a detailed survey of all sites used as landfill disposal pits, identifying boundaries and depth of disposal pits in relation to existing roadways and buildings.

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

Reason: To ensure environmental amenity is maintained. (DACHPF06)

45. **Landscape Works Certification**

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the approved landscape plan and conditions of consent.

Reason: To ensure that the landscape treatments are installed to provide landscape amenity





(DACLAFFOC1)

46. **Certification of Drainage Works and Works as Executed Data**  
A suitably qualified Civil Engineer shall certify that the completed works have been constructed in accordance with this consent and the approved Construction Certificate plans. Works as Executed data certified by a registered surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Stormwater Assets' shall be submitted to the Council for approval prior to the issue of the Occupation Certificate. Council's guidelines are available at <https://www.warringah.nsw.gov.au/sites/default/files/documents/general-information/stormwater-and-development/guideline-preparing-works-executed-data-council-stormwater-assets.pdf>  
  
Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.  
  
Reason: To ensure compliance of drainage works with Council's specification for engineering works. (DACNEF12)
47. **Removal of All Temporary Structures/Material and Construction Rubbish**  
Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.  
  
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 bushland management. (DACPLF01)
48. **Garbage and Recycling Facilities**  
All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.  
  
Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.  
  
Reason: To prevent pollution of the environment and to protect the amenity of the area. (DACPLF03)
49. **Waste Management Confirmation**  
Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.  
  
Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.
50. **Waste and Recycling Facilities Certificate of Compliance**  
The proposal shall be constructed in accordance with Warringah Development Control Plan – Part C9 Waste Management  
  
Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.





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

51. **Waste/Recycling Compliance Documentation**

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

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

52. **Positive Covenant for Waste Services**

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

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

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

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

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

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

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

54. **Allocation of Spaces**

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

- 54- Residential
- 8- Residential - Visitors
- 17 - Retail

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

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

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

55. **Hours of Operation**



The hours of operation of the ground floor business / retail premises are to be restricted to:

- o 7 days a week - 7:00am to 7:00pm inclusive.

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

56. **Commercial Waste Collection**

Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

Reason: To protect the acoustic amenity of surrounding properties.

57. **Commercial Waste and Recycling Storage**

Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins as shown on the approved plans.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed. (DACPLG19)

58. **Loading and Unloading**

All loading and unloading of vehicles and the delivery of goods must be carried out wholly within the site.

Reason: To ensure that deliveries can occur safely within the site and does not adversely affect traffic or pedestrian safety and amenity.

59. **Deliveries**

No deliveries, loading or unloading associated with the premises are to take place between the hours of 6:00am and 7:00pm on any day.

Reason: To protect ensure the acoustic amenity of surrounding properties.

60. **Right of Access (through-site vehicle link)**

A right of access (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision and the accompanying 88B instrument to ensure a through site vehicle access on all basement levels to No. 874 Pittwater Road, Dee Why as detailed on the approved plans, *Isolated Site Integration (A120 - A123)*.

The terms of the right of way (available from Northern Beaches Council), are to be prepared by a registered surveyor to Northern Beaches Council's standard requirements at the applicants expense.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issue of the any Subdivision Certificate.

Reason: To allow the reasonable development of the neighbouring site.

61. **Availability of retail and commercial parking spaces**

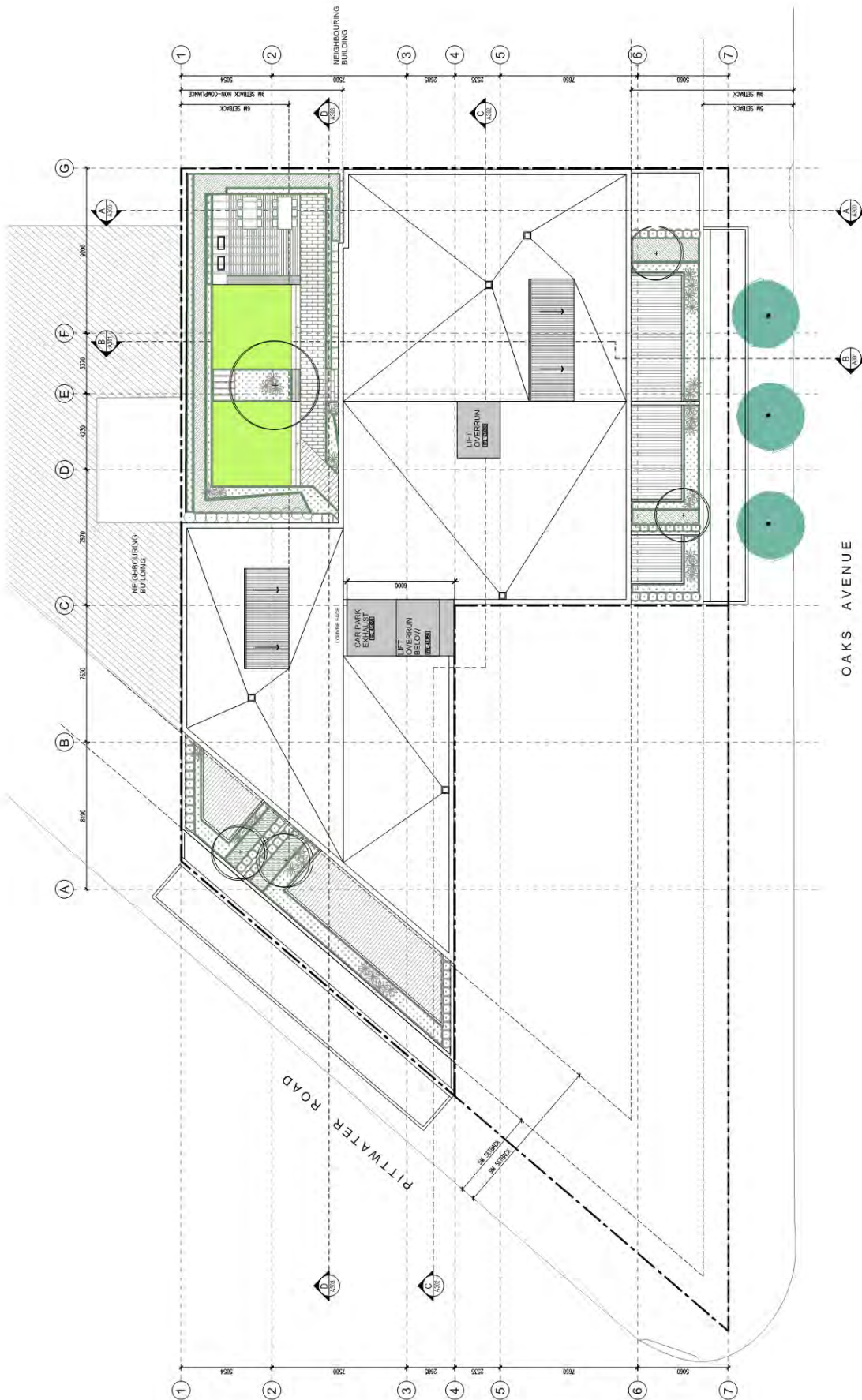
Parking spaces allocated to retail / commercial parking must be available for the customers use



during the operation hours. If the parking spaces are located behind any security roller shutter /door, it should be open during the businesses operation hours.

Reason: To ensure the availability of parking spaces for customers within the site and minimize impact on on-street parking.





**crawford architects**

**17041 A111 B**

SCALE: 1:500 (A1)  
DATE: 10/08/11  
DRAWN BY: [Name]  
CHECKED BY: [Name]  
DATE: 10/08/11

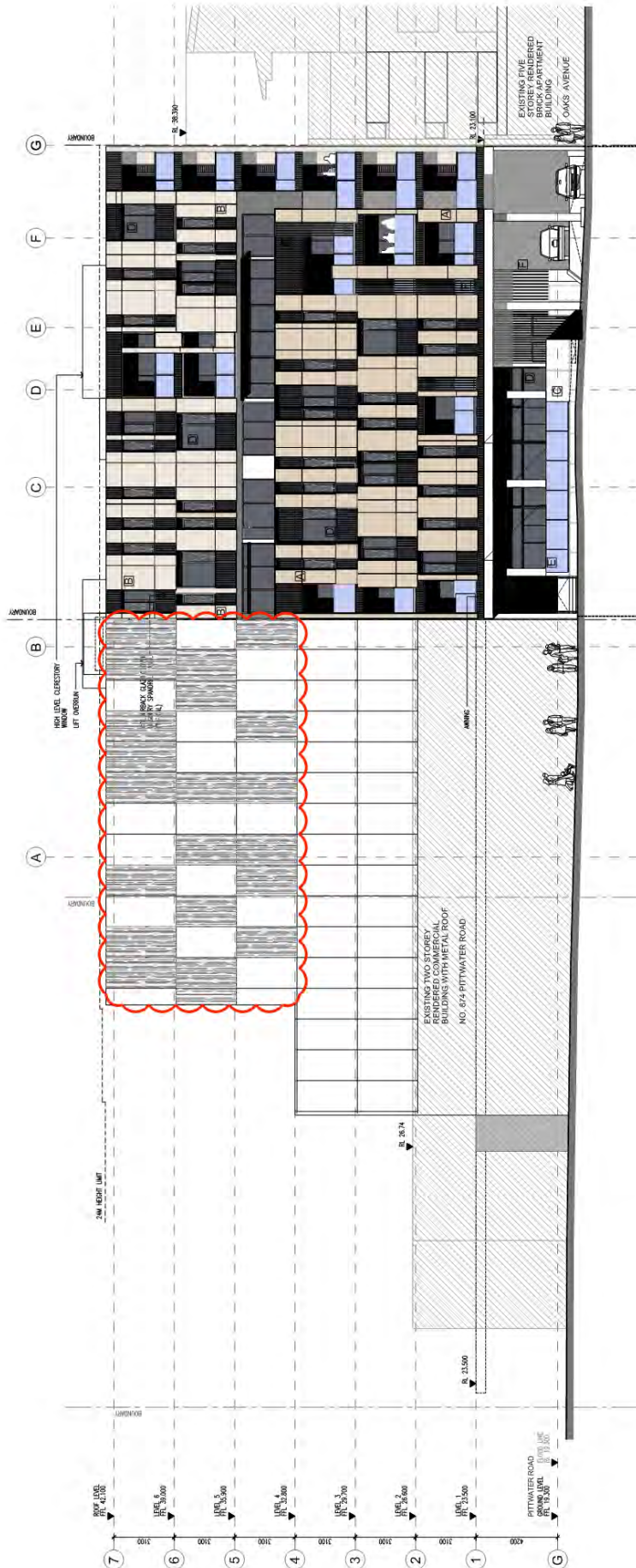
PROJECT: MIXED USE DEVELOPMENT  
876 - 878 PITTSWATER ROAD  
DEE WHY NSW 2099

DEVELOPMENT LINK

PROJECT: MIXED USE DEVELOPMENT  
876 - 878 PITTSWATER ROAD  
DEE WHY NSW 2099

DATE: 10/08/11

PROJECT: MIXED USE DEVELOPMENT  
876 - 878 PITTSWATER ROAD  
DEE WHY NSW 2099



- A PRECAST CONCRETE PANELS - PAINT FINISH 01
- B PRECAST CONCRETE PANELS - PAINT FINISH 02
- C OFF FORM CONCRETE WALL - PAINT FINISH WHERE EXPOSED
- D ALUMINIUM GRANED GLAZING - MONUMENT
- E GLASS BALUSTRADE
- F 'WOODY' COMPOSITE PLASTIC/BAMBOO VERTICAL SCREENING

**17041 A201**

PROJECT NUMBER: 17041 A201

SCALE: 1:100 (A1)

DATE: 07/2018

DA

**crawford architects**

MIXED USE DEVELOPMENT

OAKS AVENUE SOUTH ELEVATION (WITHOUT TREES)

876 - 878 PITTSBURGH ROAD

DEE WHY NSW 2099

DEVELOPMENT LINK

REVISIONS	
NO.	DESCRIPTION
1	ISSUED FOR PERMIT
2	ISSUED FOR PERMIT
3	ISSUED FOR PERMIT
4	ISSUED FOR PERMIT
5	ISSUED FOR PERMIT
6	ISSUED FOR PERMIT
7	ISSUED FOR PERMIT

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CONCRETE FINISH TO BE SMOOTH AND FINISHED TO A FINISH OF 1:1

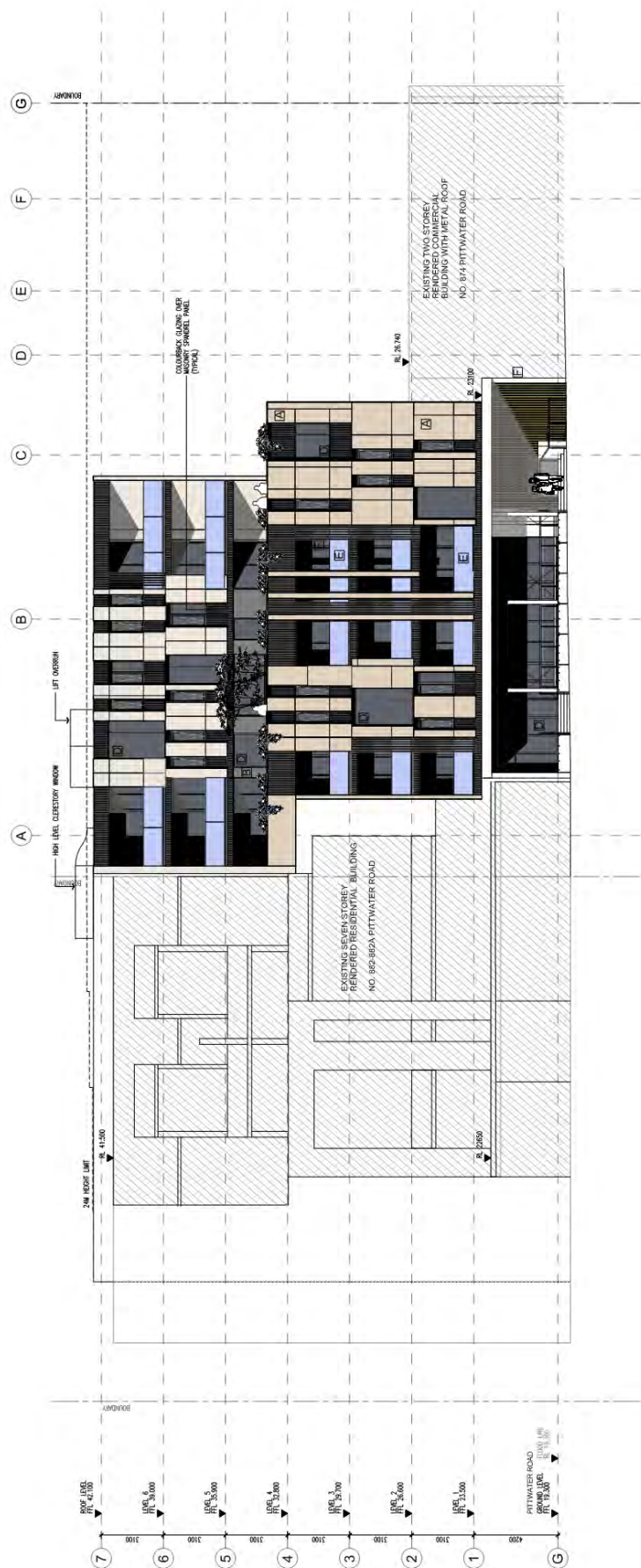
GLASS TO BE 10MM THICK UNLESS OTHERWISE SPECIFIED

ALUMINIUM GRANED GLAZING TO BE 10MM THICK UNLESS OTHERWISE SPECIFIED

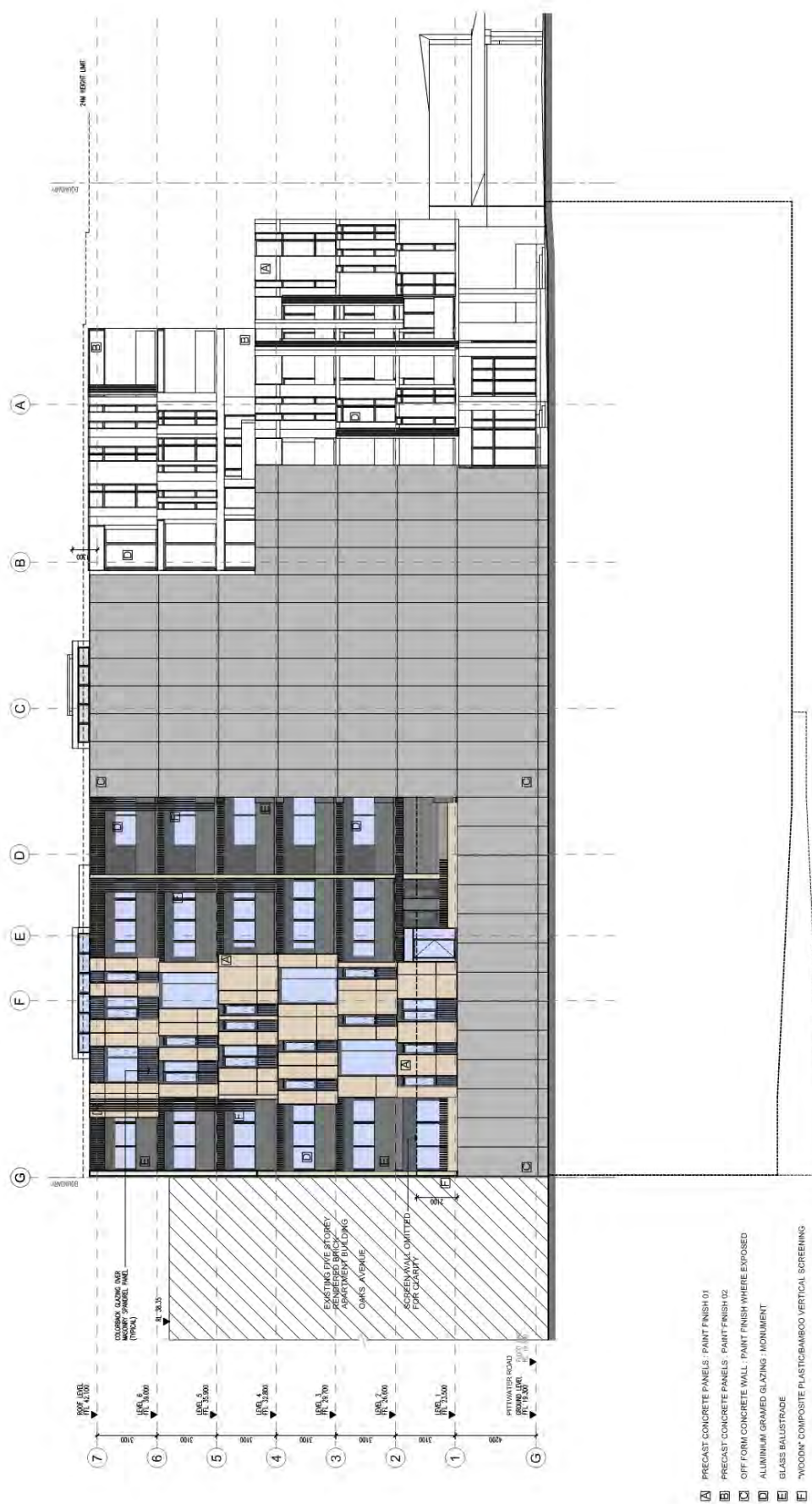
GLASS BALUSTRADE TO BE 10MM THICK UNLESS OTHERWISE SPECIFIED

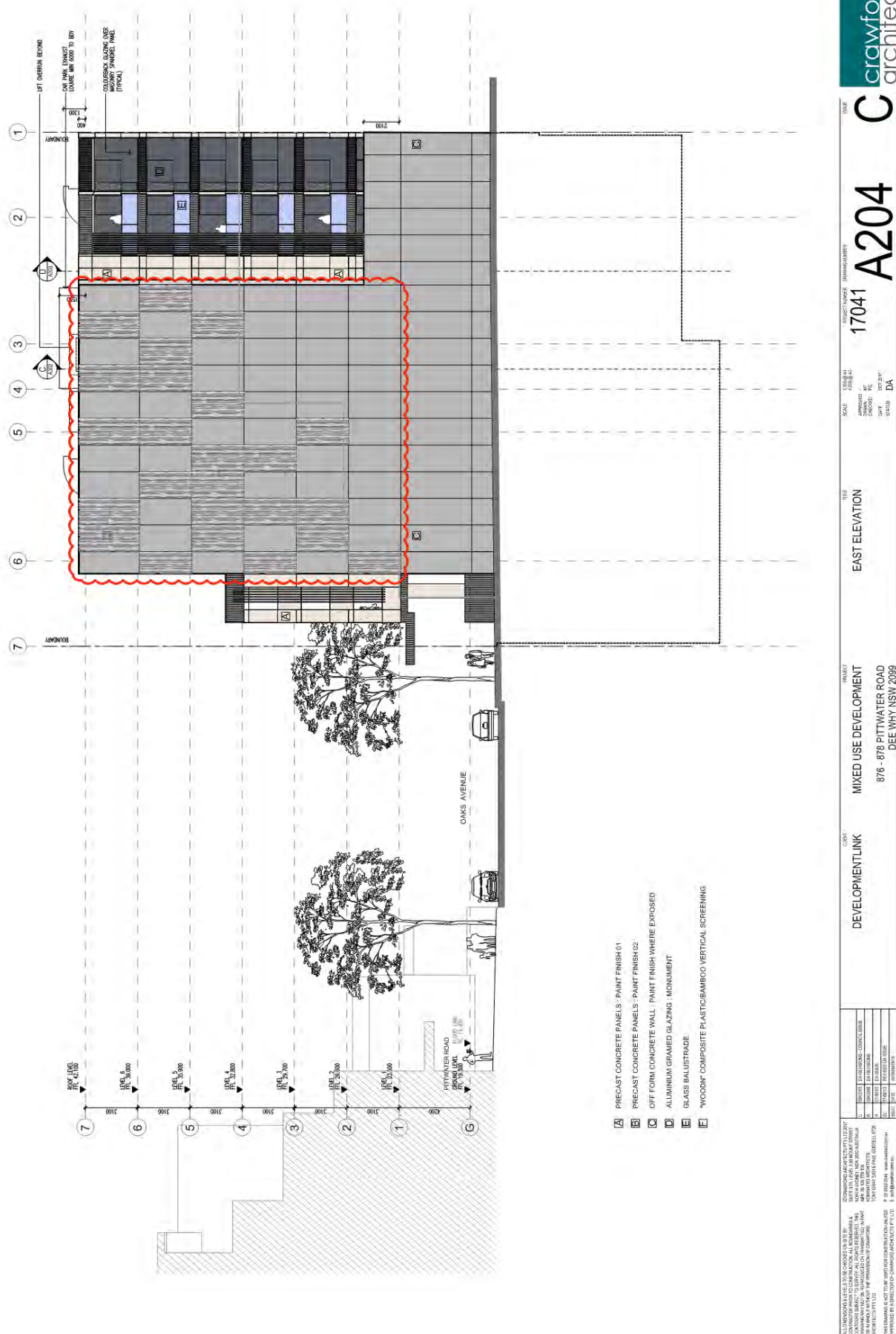
WOODEN COMPOSITE PLASTIC/BAMBOO VERTICAL SCREENING TO BE 10MM THICK UNLESS OTHERWISE SPECIFIED











ITEM 3.5	DA2017/1294 - 9-15 LAWRENCE STREET, FRESHWATER - DEMOLITION WORKS AND THE CONSTRUCTION OF A SHOP TOP HOUSING DEVELOPMENT
REPORTING OFFICER	STEVE FINDLAY
TRIM FILE REF	2018/353133
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 it is the subject of 10 or more unique submissions by way of objection.

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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. DA2017/1294 for demolition works and the construction of a shop top housing development at Lot A DP 356986 and Lot CP SP 1172, 9-15 Lawrence Street, Freshwater subject to the conditions and for the reasons set out in the Assessment Report.

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## DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2017/1294
Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot A DP 356986, 9 Lawrence Street FRESHWATER NSW 2096 Lot CP SP 1172, 15 Lawrence Street FRESHWATER NSW 2096
Proposed Development:	Demolition works and the construction of a shop top housing development
Zoning:	Warringah LEP2011 - Land zoned B2 Local Centre Warringah LEP2011 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Local Planning Panel
Land and Environment Court Action:	No
Owner:	Freshwater 2 Pty Ltd
Applicant:	IPM Holdings Pty Ltd
Application lodged:	20/12/2017
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	12/02/2018 to 14/03/2018
Advertised:	13/01/2018
Submissions Received:	36
Recommendation:	Approval
Estimated Cost of Works:	\$ 8,201,888.41

### ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant



- Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
 Warringah Local Environmental Plan 2011 - Zone B2 Local Centre  
 Warringah Development Control Plan - C2 Traffic, Access and Safety  
 Warringah Development Control Plan - C3 Parking Facilities  
 Warringah Development Control Plan - D2 Private Open Space  
 Warringah Development Control Plan - D3 Noise  
 Warringah Development Control Plan - D4 Electromagnetic Radiation  
 Warringah Development Control Plan - D7 Views  
 Warringah Development Control Plan - E7 Development on land adjoining public open space  
 Warringah Development Control Plan - F1 Local and Neighbourhood Centres  
 Warringah Development Control Plan - 1. Built form in Freshwater  
 Warringah Development Control Plan - 3. Street activation  
 Warringah Development Control Plan - 5. Access and loading  
 Warringah Development Control Plan - 8. Signage

## SITE DESCRIPTION

<b>Property Description:</b>	<p>Lot A DP 356986 , 9 Lawrence Street FRESHWATER NSW 2096</p> <p>Lot CP SP 1172 , 15 Lawrence Street FRESHWATER NSW 2096</p>
<b>Detailed Site Description:</b>	<p>The subject site consists of two allotments located on the northern side of Lawrence Street, Freshwater. The site is located within the precinct identified as "Special Area G5" Freshwater Village in the Warringah Development Control Plan 2011.</p> <p>Pursuant to the Warringah Local Environmental Plan 2011 the site is zoned for B2 Local Centre development.</p> <p>The site is irregular in shape in the that the north-western corner of the site is intersected by a Council owned carpark (the Oliver Street carpark) by 7.3m and for a length of 27m. Notwithstanding the irregular intersection as above, the two allotments combined have a street frontage to Lawrence Street of 27.43m and an overall depth of 102m equating to a total surveyed area of 2,608.6m<sup>2</sup>. The boundaries of the site are shown on the aerial image below.</p> <p>Presently both allotments are underdeveloped commensurate to the potential of the site afforded by the</p>



current planning controls and accommodate a series of one and two storey brick buildings with a shared driveway that runs centrally down the site from Lawrence Street. The rear portion of the allotments are lawned with several mature trees scattered throughout.

Topographically the sites incline towards the south-west by approximately 5.0m. The slope of the land is not steep and is consistent across the site.

The site has two easements which traverse it at present; one being an easement to drain water parallel to the rear boundary and the second being a 1.2m wide easement for underground cables which traverses the rear of the site diagonally.

#### **SURROUNDING DEVELOPMENT**

The location of the development site is unique by virtue of its eclectic surrounds.

##### North

Due north of the site is a large allotment accommodating two residential flat buildings (22 strata allotments) and car parking accessible off of Soldiers Avenue, Freshwater. Directly abutting the northern boundary of the subject development site is a car parking building that provides for a 25m spatial separation between the boundary and the residential flat building.

##### North-east

North-east of the site is the Mamora Street Uniting Church which, by virtue of scale, is irregular within the Mamora Street streetscape.

##### East

The eastern boundary of the allotment abuts two other allotments. The first allotment is located on Lawrence Street and is, by virtue of what is permissible, under developed, and the rear 50% of the allotment is vacant.

The second allotment is larger and has a narrow street frontage to Marmoa Street. This allotment has recently been developed into the 'Kahana' complex that consists of 17 strata allotments. The buildings directly adjoining the eastern boundary of the subject site are two 3-storey residential flat buildings with basement car parking. The buildings are built with a nil side boundary setback.

##### South

Due south of the sites is Lawrence Street. Across Lawrence Street is a commercial building with roof-top car parking. There is a 20m spatial separation between the two sites.





#### West

The western boundary of the site is the most eclectic of all the sites interfaces.

Due west for the first 75m of the site is a similarly under developed allotment with a frontage to Lawrence Street. At the time of writing, this site also has a development application lodged with Council for the construction of a 3-storey 12 unit shop top housing development, not dissimilar to that being proposed on the subject site (refer to DA2017/1284)

Further north along the western boundary is the Oliver Street carpark intersection that forms the irregular shape of the subject allotment. The carpark has 39 spaces and has access to the west on Oliver Street and access (through the Harbord Shopping Centre carpark) to Lawrence Street. For reasons elaborated further in this report, the development site is not gaining vehicular access from these carparks.

Further west and in the north-west is a large Ausgrid substation and telecommunications facility.

The greater context of Freshwater is predominantly characterised by single detached dwellings houses of varying age, size and construction. The small Freshwater Village area that this site is within is highly desirable and as such, special consideration is given to the developments within the precinct.

Map:



#### SITE HISTORY

A review of aerial imagery has revealed that the subject site has accommodated some form of



development from 1943 onwards. Since this time numerous structures have been placed on the land and surrounding sites.

**Development Application No. 2010/0697**

An application for demolition works and construction of a mixed use development was lodged with Council on 10 May 2010. The development site was large and included 5-19 Lawrence Street, 22A Albert Street and 18-22 Marmora Street, with a combined total area of 9,565.6m<sup>2</sup>.

In total the development included 337 car parking spaces, four 3-4 storey mixed use and residential flat buildings, three detached dwellings and seven townhouse style developments.

On 22 June 2010 Council raised a number of concerns regarding the proposal. The application was subsequently withdrawn on 6 August 2010.

**Development Application No. 2010/1446**

Following the withdrawal of DA2010/0697, the applicant revised the proposal to be for demolition of existing buildings and construction of a mixed use retail and residential development comprising of shop top housing buildings, a residential flat building and two levels of basement car parking. The application was lodged on 9 September 2010. In total, the proposal had 91 apartments, 7 townhouses and 3,415m<sup>2</sup> of retail space.

The application was heard before the Sydney East Joint Regional Planning Panel for determination on 9 December 2010. The meeting minutes read:

*1) The Panel resolves unanimously to refuse the application. The Panel notes that this is not consistent with the recommendation of the first planning assessment report, which the Panel finds thorough and sound. It is simply that the Panel has come to a different planning value judgment.*

*2) The Panel notes that the supplementary assessment report recommends refusal. The Panel also notes that the recommendation of the Warringah Development Assessment Panel is to defer the application. The Panel believes, however, that deferral would be appropriate only if some new information or amendment were expected, and this is not true in this case.*

*3) The Panel's reasons for refusal are as follows:*

*a) The proposal breaches both the eleven-metre and the three-storey height limits.*

*b) The proposal is inconsistent with the Desired Future Character of the Harbord (Freshwater) Village Locality. That character is best expressed by the words "mix of small retail and business uses with low-rise shop top housing". A four-storey apartment building without retail or business component does not fit this description.*

*c) The public opposition to the proposal is overwhelming. It includes nearly 2000 objectors as well as the local and State representatives of the community. In some cases objectors represent a private interest; however, in this case the objectors are so numerous and so many of them are not directly affected by the development, that their opposition must be considered to represent the public interest.*

Following this determination by way of refusal, the applicant lodged a Class 1 Appeal with the Land and Environment Court of NSW on 15 December 2010. The matter of *Freshwater Village Developments Pty Ltd v Warringah Council* was heard before the court on 4, 5 and 6 April 2011, with a decision date of 24 May 2011. The decision was to dismiss the appeal in its entirety.

This development scheme was not further pursued upon the subject site.





#### **Prelodgement Meeting PLM2015/0094**

On 27 August 2015 Council met with a developer to discuss a preliminary concept proposal for demolition works, construction of shop top housing, two residential flat buildings, basement car parking and landscaping works.

In principle, Council raised no fundamental concerns regarding the application subject to design modifications and further analysis of the critical issue of the reclassification of the Oliver Street carpark. A follow-up prelodgement meeting was held on 8 October 2015 to further discuss the proposal and revisions made in light of the comments made in PLM2015/0094.

#### **Prelodgement Meeting PLM2017/0100**

Prior to the lodgement of this current development application, the applicant met with Council on 5 September and 24 October 2017 to discuss the design scheme. A number of design amendments were discussed, and the formal non-verbatim minutes of the meeting highlight the primary areas of discussion in its conclusion as follows:

*The proposal to obtain vehicular access of Lawrence Street is not preferred; however Council acknowledges the attempts made by the Applicant to amalgamate with the adjoining property to the west to reduce the number of crossings, in lieu of obtaining access over the Oliver Street Carpark to the rear of the site. Council acknowledges that the re-classification of the public carpark has not occurred and that the landowner has waited a significant time period for that to happen.*

As discussed later in this report, the issue of vehicular access is a fundamental consideration in the assessment of this application.

Following the favourable comments from Council in the prelodgement meeting, the application proceeded to lodge the current development application on 20 December 2017.

#### **PROPOSED DEVELOPMENT IN DETAIL**

This development application seeks consent for demolition works and the construction of a three storey shop top housing development across two allotments. Specifically consent is sought for:

- Demolition of existing one and two storey retail and shop top housing buildings and associated outbuildings;
- Construction of a three-storey shop top housing development, comprising;
  - 23 residential units;
  - 185m<sup>2</sup> of ground level retail floorspace;
  - 410m<sup>2</sup> of communal open space on the first floor podium;
  - 46 car parking spaces (35 residential, 11 retail) and a loading dock on the ground floor; and
- Removal of five trees (with eight trees to be retained and protected);
- Associated landscaping works.

The development comprises of a single storey podium level at ground level accommodating two retail premises, car parking, storage and other infrastructure. Above the podium level the building is separated into three two-storey 'towers' spaced across the site.

For the purposes of this report, the three tower elements are hereafter referred to as follows:

- Southern-most building - *Building A* (fronting Lawrence Street)
- Central building - *Building B*





- Northern-most building - *Building C*

The architecture of the proposal is contemporary and modular in appearance with landscaping at the north and throughout the first floor podium level.

Herein this report, these works are referred to as the 'development'.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

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

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 (the 'WDCP 2011') applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p>



Section 4.15 Matters for Consideration	Comments
	<p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the WDCP 2011 section in this report. In summary, it is not found that the development will have an environmental impact of such a magnitude that would warrant the refusal of the application.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. Overall it is found that the development will contribute to the social atmosphere of Freshwater Village by providing additional high-quality housing and retail spaces in a primary location.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	During the public exhibition period of this application a number of submissions in objection to the proposal were received. The magnitude of submissions received is consistent with the public interest that the Freshwater community has in development in their area, particularly within <i>the village</i> (i.e. along Lawrence Street). The submissions have been addressed in detail elsewhere in this report, and it is concluded that the scale, intensity and magnitude of the proposed development is not inconsistent with other recent surrounding developments and does not unreasonably or detrimentally impact upon the community, thereby it can be said that the redevelopment of the site for the purpose of a shop top housing development is in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.





## NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 36 submission/s from:

Name:	Address:
Mrs Ann Marie Skarratt	12 / 32 Undercliff Road FRESHWATER NSW 2096
Mr Murray Regan	1 / 6 Lawrence Street FRESHWATER NSW 2096
Ms Merran Rosemary Doyle	1 / 8 Lawrence Street FRESHWATER NSW 2096
Mr John Gilbert Gude	61 Surfers Parade FRESHWATER NSW 2096
Northern Sydney Local Health District - Health Promotion	Health Promotion Level 5 2c Herbert Street ST LEONARDS NSW 2065
Mrs Sandra Elizabeth Young	29 Aranda Drive Davidson NSW 2085
Mr Geoffrey Charles Young	29 Aranda Drive DAVIDSON NSW 2085
Deirdre Hatton	29 Aranda Drive DAVIDSON NSW 2085
Christopher William Bull	20 Undercliff Road FRESHWATER NSW 2096
Ms Jennifer Gaye Leete	5 / 32 Undercliff Road FRESHWATER NSW 2096
Marianne Brigid Roberts	12/18 Marmora Street FRESHWATER NSW 2096
Philip John Roberts	12/18 Marmora Street FRESHWATER NSW 2096
Kara Louise Coleman	14 / 18 Marmora Street FRESHWATER NSW 2096
Gordon Russell	9 / 18 Marmora Street FRESHWATER NSW 2096
Mr Peter Eric Harley	4 Marmora Street FRESHWATER NSW 2096
Ms Cheryl Anne Pearson	5 Marmora Street FRESHWATER NSW 2096
Friends Of Freshwater Inc	4 Marmora Street FRESHWATER NSW 2096
Mr Andro Tornich	24 Johnson Street FRESHWATER NSW 2096
Mr Michael David Vanderfield	2b Pavilion St QUEENSCLIFF NSW 2096
Ms Jane Anne Calcraft	Po Box 201 FRESHWATER NSW 2096
William Joseph Calcraft	129 Harbord Road FRESHWATER NSW 2096
Mrs Toni Frances Evans	3 Marmora Street FRESHWATER NSW 2096
Scott Osmund McLachlan	13 / 18 Marmora Street FRESHWATER NSW 2096
Mr Terry John Pinson	4 Wattle Road BROOKVALE NSW 2100
Mr Russell Henry Beardmore	8 Beach Street CURL CURL NSW 2096
Pamela Joan Bullen	16 / 18 Marmora Street FRESHWATER NSW 2096
Abigail Hartley	52 Wyadra Avenue FRESHWATER NSW 2096
Mrs Denise Faith Goldstein	36 Oceanview Road FRESHWATER NSW 2096
Mrs Vyk Louise Bergseng	24 Kooloora Avenue FRESHWATER NSW 2096
Ms Christine Anne Frith	104 Soldiers Avenue FRESHWATER NSW 2096
Mr Darryn Edward Lang	24 Marmora Street FRESHWATER NSW 2096
Mrs Catherine Ainslie Vautier	2 / 30 Charles Street FRESHWATER NSW 2096
Mr William Mackenzie	15 Delmar Parade DEE WHY NSW 2099





Name:	Address:
Morrison	
Mrs Lynn Lowe	49 Undercliff Road FRESHWATER NSW 2096
Ann Elizabeth Sharp	77 Brighton Street CURL CURL NSW 2096
BBF Town Planners	1 / 9 Narabang Way BELROSE NSW 2085

#### **First Notification**

Upon receipt of this development application, Council commenced its statutory notification period between 12 January 2018 - 15 February 2018 pursuant to Part A.7 of the Warringah Development Control Plan 2011 (WDCP 2011). During this time Council was made aware that several surrounding properties had not been formally notified of the subject development.

Upon review it was evident that an administrative error had resulted in several surrounding properties not being correctly notified in accordance with Council's policies.

#### **Second Notification (Renotification)**

Accordingly, Council recommenced the notification period of the application on 12 February 2018 until 14 March 2018 to ensure that surrounding residents were given a sufficient timeframe to comment on the application (61 days in total).

The matters raised in the submissions include:

1. Pedestrian safety on Lawrence Street
2. Vehicular access through the Oliver Street carpark
3. Electromagnetic Field (EMF) effects
4. Site amalgamation
5. Built form - building height
6. Stormwater management
7. Amenity impacts - solar access and acoustic impacts
8. Loss of trees

The submission matters are addressed as follows:

#### **1. Pedestrian Safety on Lawrence Street**

Submissions received note that Lawrence Street is characterised as a pedestrian-friendly environment that is harmonious with the notion of a 'village centre.' Submissions request that no new driveway crossings should be permitted onto Lawrence Street, as permitting such development could impact on the safety of pedestrians with entering and exiting traffic from the site.

#### **Comment**

The proposed development is entitled to have a vehicular access point onto Lawrence Street as no



other locations are available at this point in time (as elaborated upon later in this report). Whilst it is noted that it is preferable to have no new driveway crossings onto Lawrence Street, this is not a feasible nor realistic expectation given the constraints attributed to this site and the legal right to have access from the public road.

The application is accompanied by an *Assessment of Traffic, Transport and Parking Implications* (dated 2017 and prepared by Transport and Traffic Planning Associates). This report has been reviewed and the design independently assessed by Council's Traffic Engineers who have recommended approval to the proposal subject to a number of conditions.

A specific condition has been imposed (Pedestrian safety measures at driveway) that details safety measures to be installed prior to the issuing of the Occupation Certificate.

Accordingly, this matter is resolved by way of condition and does not warrant refusal of the application.

## 2. Vehicular Access through Oliver Street Carpark

Submissions received detail that the proposed development should obtain vehicular access via the Oliver Street carpark to the north-west rather than from Lawrence Street, thus negating any requirement for the new crossing onto Lawrence Street.

### Comment

The Oliver Street carpark is classified as "Community Land" and not "Operational Land" pursuant to the Local Government Act 1993, and this classification acts as an impediment for the development to gain vehicular access via this carpark. Pursuant to the Roads Act 1993, the site is entitled to a vehicular access point and therefore, at this time, the only opportunity is via Lawrence Street.

There is presently public interest in the reclassification of the Oliver Street carpark which, in the context of this application, would result in a favourable outcome as noted by the submissions received. In this regard, it is found that a reasonable solution for vehicular access is to future-proof the site so that, if and when the Oliver Street carpark is reclassified to Operational Land, the development will physically be able to obtain access between the allotments. Such considerations must be taken into account at DA stage and prior to construction.

Council has requested that the applicant amend the architectural plans to notate 'Provision of possible future link to Oliver Street carpark'. Such notation exists on Drawing 10524-DA-101 dated 26 April 2018.

The purpose of having this link available to the development in future (whether it be constructed or not at the time the carpark is reclassified) is to enable the developer the option to connect the two carparks to reduce the quantum of usage of the Lawrence Street crossing, or to eliminate it entirely. If such were to occur, the applicant would have the opportunity to lodge a new development application for an additional retail premise in the location of the proposed Lawrence Street driveway which would enhance the village atmosphere of Lawrence Street, enhance public safety and provide for all vehicular movements from the public carpark and Oliver Street.

Accordingly, it is found that the recommendations of this report adequately future-proof the development site to enable future access to the Oliver Street carpark should this option become available.

## 3. Electromagnetic Field (EMF) Effects

Submissions received raise concern about the potential EMF impact upon occupants of the subject





development.

Comment

The development application is accompanied by an electromagnetic survey dated 27 November 2017 by EMR Surveys Pty Ltd. The report is prepared by an industry expert. The report and application as a whole has been reviewed by Council's Environmental Health Officer whom has raised no objections to the proposed development, subject to conditions as included in the recommendations of this report.

#### 4. Site Amalgamation

Submissions received note that there is logic in amalgamating sites at 9 - 15 and 21 Lawrence Street, Freshwater in order to have a more harmonious development and to reduce the number of vehicular crossings onto Lawrence Street. At the time of writing this report, there is also an application for a shop top housing development at the adjoining 21 Lawrence Street, which is currently under assessment by Council (refer DA2017/1284).

Comment

It is concurred that the amalgamation of these sites could be beneficial in that it would provide for one larger development site and, potentially, a more contextually appropriate development. From review of the submissions received, the predominant reason raised for site amalgamation would be to reduce the quantum of driveway crossings on Lawrence Street.

In accordance with the Planning Principles established in the Land and Environment Court case *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251, the applicant has provided documentation detailing why the amalgamation of the allotments is not feasible.

In the first instance, the applicant had attempted to purchase the adjoining land for the purpose of a larger development, however purchasing attempts were demonstrated to be unsuccessful. In the second instance, the applicant had attempted to pursue a joint venture development with the adjoining land owners for the purpose of a larger development. The terms of any joint venture development could not be agreed and resulted in the consolidated development being unviable.

It is considered that the documentation provided is satisfactory in demonstrating that attempts to amalgamate allotments were unsuccessful.

In any event, both the subject development site and No. 21 Lawrence Street are large enough to be developed independently without being constrained and will not result in site isolation. In the broader context of Lawrence Street, it is considered that the scale of development proposed is compatible with the scale of development in the streetscape. The amalgamation of the sites would inevitably result in a significantly larger form and mass of development that may be less compatible with the streetscape and the village feel of Freshwater.

Accordingly, the matter of site amalgamation is not considered reason to warrant the refusal of the application.

#### 5. Built Form - Building Height

Submissions received note that the proposed development exceeds the maximum permissible building height pursuant to Clause 4.3 of the Warringah Local Environmental Plan 2011 (WLEP 2011),

Comment

A detailed review of the proposed variation to the building height control can be found in Part 4.6 Variation to Development Standard in this report. In summary, it is found that the height proposed is





generally compatible with surrounding developments and does not give rise to any unreasonable nor detrimental amenity or environmental impact.

Accordingly, this matter does not warrant the refusal of the application.

## 6. Stormwater Management

Submissions received express the importance of any development on this land having an adequate stormwater system.

### Comment

The proposed stormwater management system has been reviewed by Council's Development Engineers who raise no objection to the proposed mechanisms, subject to conditions as recommended.

## 7. Amenity Impact

Concern is raised in the submissions received from the occupants of the adjoining building that the development may give rise to amenity impacts including loss of solar access, visual impact of the development and acoustic impacts of the at-grade carpark.

### Comment

Provision of amenity has been assessed individually throughout this report. In summary the report concludes the following:

#### **7.1. Loss of solar access**

The development does not give rise to any level of overshadowing than is greater than what the planning controls permit. Accordingly, this matter does not warrant the refusal of the application.

#### **7.2. Visual impact**

Concern was raised (and elaborated upon in meetings with objectors) regarding the height of the boundary wall adjacent to the outdoor space of the adjoining Kahana development situated to the east. Design alternatives were explored and Council requested that the applicant provide additional design alternatives. The arrangement of the two buildings has resulted in it being inevitable that there will be some form of wall on the property boundary in order to provide a reasonable level of privacy between the two developments. In this instance, the design proposed is considered to be a better alternative than if a three storey building were to be proposed in this location.

#### **7.3. Acoustic impact**

Concern was raised about the potential acoustic impact that the at-grade carpark may have on adjoining developments, particularly through the northern and southern openings. This matter can be adequately resolved via conditions which require appropriate acoustic treatments to openings.

Accordingly, these matters are not of a magnitude to warrant the refusal of the application.

## 8. Loss of trees

Submissions raise objection that the development will require the removal of trees on the subject site.

### Comment

The redevelopment of this site was inevitably going to require the removal of the existing trees present on the site. The proposal has been assessed by Council's Landscape Officer who raised no objections, subject to conditions as recommended. It is found that the proposed landscape plan accompanying the DA will satisfactorily mitigate the loss of trees through additional plantings.



## MEDIATION

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

## REFERRALS

Internal Referral Body	Comments												
Building Assessment - Fire and Disability upgrades	<p><i>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</i></p> <p><i>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</i></p>												
Environmental Health (Industrial)	<table border="1"> <tr> <td>Is the proposal for an industrial use?</td><td>YES</td></tr> <tr> <td>Was sufficient documentation provided appropriate for referral?</td><td>YES</td></tr> <tr> <td>Are the reports undertaken by a suitably qualified consultant?</td><td>YES</td></tr> <tr> <td>Have you reviewed the Statement of Environmental Effects, and consider ongoing use, such as: - Processes with emphasis on potential pollution (air, noise, water and land) - Hazardous Materials, liquids stored on site - Waste storage, disposal. - Mechanical ventilation</td><td>YES</td></tr> <tr> <td>Have you Consider impact of noise, hours of operation, location to nearest residential, location of equipment, times of deliveries, noise management plans, acoustic reports etc.</td><td>YES</td></tr> <tr> <td>If the proposal is a scheduled premises have you recommended that the DAO refer the proposal to OEH?</td><td>N/A</td></tr> </table> <p><b>General Comments</b></p> <p><b>Noise</b> - an acoustic report has not been submitted to determine if the noise generated from the property (specifically the condenser units located on the roof) will not create offensive noise.</p> <p><i>The SoEE states that the mechanical plant has not been selected at this stage. Environmental Health recommends that prior to issuing the CC an acoustic report is to be submitted and recommendations detailed in the report shall be implemented to ensure that the selected plant does not exceed the regulations.</i></p> <p><b>Contamination</b> - A stage 1 Preliminary report was submitted and it was stated that potential contamination was identified.</p>	Is the proposal for an industrial use?	YES	Was sufficient documentation provided appropriate for referral?	YES	Are the reports undertaken by a suitably qualified consultant?	YES	Have you reviewed the Statement of Environmental Effects, and consider ongoing use, such as: - Processes with emphasis on potential pollution (air, noise, water and land) - Hazardous Materials, liquids stored on site - Waste storage, disposal. - Mechanical ventilation	YES	Have you Consider impact of noise, hours of operation, location to nearest residential, location of equipment, times of deliveries, noise management plans, acoustic reports etc.	YES	If the proposal is a scheduled premises have you recommended that the DAO refer the proposal to OEH?	N/A
Is the proposal for an industrial use?	YES												
Was sufficient documentation provided appropriate for referral?	YES												
Are the reports undertaken by a suitably qualified consultant?	YES												
Have you reviewed the Statement of Environmental Effects, and consider ongoing use, such as: - Processes with emphasis on potential pollution (air, noise, water and land) - Hazardous Materials, liquids stored on site - Waste storage, disposal. - Mechanical ventilation	YES												
Have you Consider impact of noise, hours of operation, location to nearest residential, location of equipment, times of deliveries, noise management plans, acoustic reports etc.	YES												
If the proposal is a scheduled premises have you recommended that the DAO refer the proposal to OEH?	N/A												



Internal Referral Body	Comments		
	<p><i>Environmental health has recommends a condition for additional investigation to be undertaken.</i></p> <p><b>Electromagnetic Field</b> - A electromagnetic survey was submitted, the results of the survey determined that there was no significant electric or magnetic field measured, and all fields comply with Australian and International Standards. However the survey has only addressed short term exposure. Advice provided by John Lincoln - Electromagnetic fields expert confirmed that there is no studies available at this stage to determine the effects of long term low-exposure effects.</p> <p><i>Environmental Health does not have any ground to refuse this application, the report that was provided and any current short term exposure studies indicate that there is no risk to public health. Until there are long term studies Environmental Health is unable to make comments with regards to long term public health risk.</i></p> <table border="1"> <tr> <td><b>Recommendation</b></td><td>Approval - Subject to conditions</td></tr> </table> <p>Comments completed by: Mary Shimon Date: 22 May 2018</p>	<b>Recommendation</b>	Approval - Subject to conditions
<b>Recommendation</b>	Approval - Subject to conditions		
Landscape Officer	<i>Landscape Assessment has raised no objections to the proposed development, subject to conditions as recommended.</i>		
NECC (Development Engineering)	<p><u>Revised Development Engineering Referral - 15 May 2018</u></p> <p><i>Development Engineers have reviewed the proposal and raise no objections subject to conditions.</i></p> <p><u>Superseded Development Engineering Referral - 14 March 2018</u></p> <p><i>Development Engineers have reviewed the proposal and cannot support the proposal due to the following reasons:</i></p> <p><b>1. Insufficient details are provided to demonstrate the development site is not impacted by the 1 in 100 year ARI storm event overland flow path. In order for Development Engineers to adequately check the design of the OSD system and analysis of the 1 in 100 yr ARI upstream catchment flows, when the DRAINS program is used, the input data and summary information including a copy of the model on computer disc must be provided. This information has not been submitted to Development Engineers for assessment to date.</b></p> <p><b>2. Where the development site is deemed to be impacted by the 1 in 100 year ARI overland flow path, all requirements of Section 9.3, Overland Flow of Council's "Stormwater Drainage : From Low Level Properties" Policy, PDS-PL 136. The extents of the existing and proposed overland flow path are to clearly shown on the architectural and stormwater drainage plans and modelled using the HECRAS computer program. The HECRAS computer model is to be submitted</b></p>		





Internal Referral Body	Comments
	<p>to Development Engineers for assessment. Runoff from the developed site must not cause a detrimental effect on any property. This may require the retention (and possible expansion) of existing surface flow paths.</p> <p>3. No written concurrence of the proposal was issued by Council's Traffic Engineers with respect to the location and dimension of the vehicle access fronting Lawrence Street. The proposed vehicle crossing conflicts with the existing kerb blister of the wombat crossing in Lawrence Street. In order for the vehicle crossing to be constructed, the kerb blister will need to be modified. In this regard Development Engineers are unable to finalise the assessment of the proposal without comments/concurrence from Council's Traffic Engineers.</p> <p>4. The proposed vehicle crossing conflicts with the existing kerb blister of the wombat crossing in Lawrence Street. In order for the vehicle crossing to be constructed, the kerb blister will need to be modified. No written concurrence of the proposal was issued by Council's Manager, Transport &amp; Civil Infrastructure Assets for the modification of the above kerb blister. A referral request for comments should be issued to Council's Manager, Transport &amp; Civil Infrastructure Assets to respond to the above issue.</p> <p>5. The proposed vehicle crossing conflicts with the existing stormwater kerb inlet in Lawrence Street. In order for the vehicle crossing to be constructed, the stormwater kerb inlet pit will need to be modified or relocated. No written concurrence of the proposal was issued by Council's Stormwater Assets Engineer for the modification of this pit.</p> <p>6. No written concurrence of the proposal was issued by Council's Stormwater Assets Engineer with respect to Section 6, Building Over or Adjacent to Council Drainage Systems and Easements Policy of Council's "Stormwater Drainage : From Low Level Properties" Policy, PDS-PL 136.</p> <p>Not supported for approval due to lack of information to address:</p> <ul style="list-style-type: none"> <li>• Stormwater drainage for the development in accordance with clause C4 Stormwater of the DCP;</li> <li>• Council's Stormwater pipeline clearance for the development in accordance with clause C6 Building over or adjacent to Constructed Council Drainage Easements; and</li> <li>• Vehicle access for the development and impact of Council's road infrastructure in accordance with clause C2 Traffic, Access and Safety.</li> </ul>
NECC (Water Management)	<p>No objection to approval subject to conditions as recommended, on the basis that the Development Engineers are satisfied with the proposed dual use of the bioretention/onsite detention basin. Should the design change, these referral comments may no longer be valid and as such a new referral required.</p>



Internal Referral Body	Comments
	<p><u>Planner comment</u></p> <p>Council's Development Engineers have reviewed the proposed development and raise no objection, subject to conditions.</p>
Traffic Engineer	<p><i>Council Traffic Engineers have raised no objection to the proposed development on terms of traffic safety, internal car parking or impacts on the road network, subject to conditions as recommended.</i></p>
Waste Officer	<p><i>Waste Services raises no objection to the proposed development, subject to conditions.</i></p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p><i>I refer to Northern Beaches Council development application DA2017/1294.</i></p> <p><i>This letter is Ausgrid's response under clause 45(2) of the State Environmental planning Policy (Infrastructure) 2007.</i></p> <p><i>The assessment and evaluation of environmental impacts for a new development consent (or where a development consent is modified) is undertaken in accordance with requirements of Section 79C of the Environmental Planning and Assessment Act 1979 (now known as Section 4.15). One of the obligations upon consent authorities, such as local councils, is to consider the suitability of the site for the development which can include a consideration of whether the proposal is compatible with the surrounding land uses and the existing environment.</i></p> <p><i>In this regard, Ausgrid requires that due consideration be given to the compatibility of proposed development with existing Ausgrid infrastructure, particularly in relation to risks of electrocution, fire risks, Electric &amp; Magnetic Fields (EMFs), noise, visual amenity and other matters that may impact on Ausgrid or the development.</i></p> <p><u>Planner comment</u></p> <p>Ausgrid's assessment of the application dated 22 January 2018 finds that the development is satisfactory, subject to conditions as imposed in the recommendation of this report.</p>

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

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

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

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





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

### SEPP 55 - Remediation of Land

Clause 7(1)(a) of SEPP 55 requires the consent authority to consider whether land is contaminated.

In response to the above requirements of the SEPP, the applicant has submitted a Preliminary Environmental Site Investigation (ref: E30969Krpt) dated 16 November 2017 and prepared by EIS (Environmental Investigation Services). In its conclusion, the investigation states:

*Based on the scope of work undertaken for the assessment, EIS are of the opinion that the historical land uses and potential sources of contamination identified would not preclude the proposed development. However, the following is recommended to better assess the risks associated with the CoPC:*

- *An intrusive investigation should be undertaken to make an assessment of the potential soil and groundwater contamination conditions and to address the data gaps associated with the limited sub-surface information available; and*
- *A hazardous building materials survey should be undertaken prior to demolition of the buildings. Following demolition of the buildings (and preferably prior to removal of the hardstand), an asbestos clearance certificate should be provided.*

*EIS also recommend that a waste classification is undertaken to classify material to be excavated for the proposed development. Fill and contaminated soil disposal costs are significant and may affect project viability. These costs should be assessed at an early stage of the project development to avoid significant future unexpected additional costs.*

*Considering the findings of the assessment, EIS are of the opinion that the site can be made suitable for the proposed development subject to the appropriate implementation of the recommendations. The investigation report should confirm the conclusion in relation to site suitability based on the additional data obtained. (Part 6.3 Conclusions and Recommendations in E30969Krpt dated 16/11/17).*

Therefore, as the Investigation indicates that there is a potential for contaminants to exist on the site, Clauses 7(1)(b) and 7(1)(c) of the SEPP must be considered.

Clause 7(1)(b) stipulates that "if the land is contaminated, it [Council] is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out".

Council's Environmental Health Officer has reviewed the Preliminary Environmental Site Investigation and accompanying documentation for this application. No objections are raised on the grounds of contamination or remediation subject to the endorsement of the recommendations in the report as well as the requirement to produce a Contamination Management Plan (CMP) prior to the issue of any Construction Certificate.

Based on the findings of the report and the requirements of the report, Council is satisfied that the land can be made suitable for the purpose of a shop top housing development.

Clause 7(1)(c) stipulates that "if the land requires remediation to be made suitable for the purpose for





*which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose".*

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

#### **SEPP 65 - Design Quality of Residential Apartment Development**

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

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

*(a) the development consists of any of the following:*

- (i) the erection of a new building,*
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,*
- (iii) the conversion of an existing building, and*

*(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and*

*(c) the building concerned contains at least 4 or more dwellings.*

As previously outlined, the proposed development is for the erection of a three storey shop top housing development plus basement car parking for the provision of 23 self-contained dwellings.

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

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

Clause 28 of SEPP 65 requires:

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

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

#### **DESIGN REVIEW PANEL**

Northern Beaches Council does not have an appointed Design Review Panel.



## DESIGN QUALITY PRINCIPLES

### Principle 1: Context and Neighbourhood Character

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

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

#### Comment:

In consideration of this development proposal, the contextual appropriateness with the neighbourhood character has been a primary focus to ensure that the scale and design of development does not impact upon the village atmosphere of Freshwater.

It must be reasonably expected that the site would be developed in a way envisaged by the current planning controls (which permit development for the purposes of shop top housing) to maximise the development potential of the land in such a prime location.

The architecture of the proposal is of a scale and height that is not dissimilar to that of other recent surrounding developments but still maintains a human-scale streetscape facade to integrate with the existing relationship of shopfronts in Lawrence Street to protect the village atmosphere. The building proposed is well designed and will provide a high-level of amenity for occupants without unreasonably impacting on the amenity of the surrounding community. The proposed additional retail premises fronting onto Lawrence Street will provide for opportunities to enhance the social and economic development of the community in a beneficial way.

Overall, it is found that the development is contextually appropriate for the attributes of the site and will be of good neighbourhood character in accordance with Principle 1.

### Principle 2: Built Form and Scale

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

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

#### Comment:

The proposed development is for a three storey shop top housing development that, for the most part, complies with the relevant built form standards pertaining to the site. The architecture of the proposal is considered to be of a high quality that incorporates a visually interesting Lawrence Street facade that is not only consistent with the desired future character of the area in terms of design, but will significantly contribute to enhancing the overall streetscape.

The bulk, scale and height of the building when viewed from the public domain is consistent with the planning controls that apply to the site and are consistent with recent surrounding developments and developments that could be reasonably expected in the future on surrounding sites.





The built form and scale is considered to be acceptable in the context of the site and is supported given its high quality of design and the contribution it will have to the Lawrence Street streetscape and atmosphere - thereby satisfying Principle 2.

**Principle 3: Density**

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

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

Comment:

Given the context of the development and other recent developments within the area, it is anticipated that the apartments within the complex will sell for a premium price and accordingly, the proposal has ensured that each apartment has a high level of amenity by virtue of size, layout and privacy. This high level of amenity and the high quality of design has reduced the density of what the site could accommodate if the apartments were much smaller in size.

The density that is proposed on the site is considered to be appropriate to the site and the Freshwater Village locale which, by virtue of permitted development, allows for medium density developments such as this. The scale of this development will contribute to sustainably housing the growing population of the Northern Beaches of Sydney at a quantum that is appropriate for the context of Lawrence Street by virtue of infrastructure, public transport, access to jobs, community facilities and the green environment. Accordingly it is found that the development as proposed satisfies Principle 3.

**Principle 4: Sustainability**

*Good design combines positive environmental, social and economic outcomes.*

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

Comment:

The development is considered to satisfy Principle 4 pertaining to sustainability both in-and-of-itself and within a wider context.

As above, the additional housing the development will provide is appropriate for the context of the site and commensurate to anticipated population growth without becoming an 'over-development' of the site.

With regards to the ecologically sustainable development elements of the building (ESD):

- the building achieves a high level of solar access;
- the building achieves a high level of cross ventilation;
- the building will be a 6-Star Green Star building;
- the development will provide opportunities for a diverse landscape setting to provide habitat for a variety of wildlife.

With regards to social and economic sustainability, the development is considered to be appropriate for the context of the site and not of a magnitude that would have any significant nor detrimental discernible impacts upon the social or financial economy of the area.





Accordingly, the development is found to satisfy Principle 4.

**Principle 5: Landscape**

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

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

Comment:

The proposed development will result in a reduction in the amount of landscaped open space presently available on the site, however the site is within a B2 Local Centre zone which does not envisage a ground level landscaped area due to the type of development allowed within the centre and the desired future character. Nevertheless, it is found that the quality, intensity and diversity of landscaping proposed adequately integrates the building into the streetscape and contributes to the amenity of the neighbourhood.

At present, the site is relatively barren and is sparsely vegetated by several mature trees. The diversity of landscaping proposed in this application consists of ground-cover plantings, shrubbery and medium-scale trees which can all contribute to an enhanced amenity, streetscape and habitat availability. The provision of landscaping proposed is considered to be acceptable for the site and satisfactory when tested against Principle 5.

**Principle 6: Amenity**

*Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.*

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

Comment:

As discussed earlier, the market value of the land demands that the proposed apartments be of a high quality, high amenity and reasonable in scale. The scale and layout of each apartment and the building as a whole is considered to be acceptable for a diverse range of persons and will enable a positive living environment and resident wellbeing and importantly, satisfies the requirements of the ADG in terms of light, privacy and functionality.

**Principle 7: Safety**

*Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.*

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



**Comment:**

The development is found to provide an adequate provision of safety by virtue of systems and passive/casual surveillance of the streetscape and the Oliver Street carpark.

**Principle 8: Housing Diversity and Social Interaction**

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

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

**Comment:**

The development provides a mix of one, two and three bedrooms apartments of varying configurations and sizes that will provide housing diversity options for potential purchasers. Whilst not having a dedicated communal space beyond the communal walkways and adjoining outdoor seating area, the development is designed in such a manner that resident interaction in communal spaces is envisaged to be frequent and opportunities for further social interaction are available in the commercial areas of Lawrence Street of surrounding public open spaces.

**Principle 9: Aesthetics**

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

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

**Comment:**

The architectural form of the development is modulated with deep landscaped recesses on the first floor addressing Lawrence Street. The material palette is one that is consistent with the streetscape and will be appealing and durable in longevity. As detailed throughout this report, the quality of the architecture proposed is considered to be of a high standard that will positively contribute to the streetscape and the surrounding Freshwater area, thereby satisfying Principle 9 of the ADG.

**APARTMENT DESIGN GUIDE**

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

Development Control	Criteria / Guideline	Comments
<b>Part 3 Siting the Development</b>		
<b>Site Analysis</b>	Does the development relate well to its context and is it sited appropriately?	<b>Consistent</b> The proposed development is sited appropriately on land that has been identified for (inter alia) shop top housing development. The scale, architecture and density of the building



		is commensurate to the overall Freshwater Village atmosphere and is considered to be contextually appropriate for the land as demonstrated through this ADG assessment.
<b>Orientation</b>	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	<p><b>Consistent</b></p> <p>The proposed development is physically orientated towards Lawrence Street with the retail premises visible and accessible from the streetscape, with other service infrastructure and carparking being hidden out of sight.</p> <p>The modulated built form proposed is separated and orientated in such a manner that provides an appropriate level of sunlight both in and surrounding the site and reasonably protects the amenity of surrounding lands.</p> <p>Therefore it is found that the development as proposed is appropriately orientated for the context of the site.</p>
<b>Public Domain Interface</b>	<p>Does the development transition well between the private and public domain without compromising safety and security?</p> <p>Is the amenity of the public domain retained and enhanced?</p>	<p><b>Consistent</b></p> <p>The southern facade to Lawrence Street is the only noteworthy public domain interface.</p> <p>This facade accommodates the residents entry, two retail outlets, a service infrastructure closet and the driveway into the development.</p> <p>The public retail premises and the residents entry</p>





		<p>into the development are clearly delineated and provide for a reasonable transition into the Lawrence Street footpath.</p> <p>The development does not impinge upon the existing public domain, but rather improves it through contemporary architecture and two new retail premises and accordingly, the development is found to satisfy this part of the ADG.</p>
<b>Communal and Public Open Space</b>	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> <li>1. Communal open space has a minimum area equal to 25% of the site</li> <li>2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)</li> </ol>	<p><b>Not Consistent - (satisfactory on merit)</b></p> <p>The proposed development proposed does not incorporate any primary communal spaces such as gymnasiums, swimming pools or the like, but it does incorporate the podium walkway level and gardens at first floor level measuring a total of 410m<sup>2</sup>. This area equates to 15.7% of the total site area and therefore does not meet the spatial requirement of the site, but it does receive an adequate provision of solar access.</p> <p>The variations sought to the requirement for communal open spaces is not considered to warrant the refusal of the application as each apartment is served by large private open spaces and by virtue of the location of the site - being central in a 'village' area and in proximity to the beach.</p>



		It is not considered that the amenity and lifestyles of occupants will be detrimentally impacted by virtue of the variation sought to this control.												
<b>Deep Soil Zones</b>	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m<sup>2</sup></td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td><td>3m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup></td><td>6m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m <sup>2</sup>	-	7%	650m <sup>2</sup> – 1,500m <sup>2</sup>	3m	Greater than 1,500m <sup>2</sup>	6m	Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m	<p><b>Not Consistent - (satisfactory on merit)</b></p> <p>The proposed development site is surveyed to be 2608.6m<sup>2</sup>, thereby requiring that 7% of the site area of deep soil landscaping with minimum dimensions of 6m.</p> <p>In accordance with the calculations of the requirement, the site has 0% deep soil landscaping (given that the larger landscaped area towards the northern end of the site has an OSD tank beneath 50% of the landscapable area (note that the control has no minimum soil depth requirement - however it is reasonably assumed that approx. 1m soil depth would not quantify as deep soil zone).</p> <p>Despite varying this requirement it is found that the development has introduced adequate areas of landscaping both at grade and on higher levels of the building to afford residents opportunities to harness the benefits of landscaping. Therefore, the landscaped treatment proposed is considered to be appropriate and acceptable in this particular circumstance.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m <sup>2</sup>	-	7%												
650m <sup>2</sup> – 1,500m <sup>2</sup>	3m													
Greater than 1,500m <sup>2</sup>	6m													
Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m													
<b>Visual Privacy</b>	Minimum required separation distances from	<b>Consistent</b>												



buildings to the side and rear boundaries are as follows:

Building height	Habitable rooms and balconies	Non-habitable rooms
Up to 12m (4 storeys)	6m	3m
Up to 25m (5-8 storeys)	9m	4.5m
Over 25m (9+ storeys)	12m	6m

**Note:** Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.

Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.

The architecture of the proposal has orientated only one of the three buildings (being Building B) to face towards a side boundary (to the east). The habitable rooms and balconies of this building are setback a minimum of 6m from the boundary and therefore comply with the recommended setbacks of the ADG.

There are numerous balconies and courtyards throughout the development itself that would not comply with this numerical spatial separation if the ADG setbacks were applied internal of the development site.

In the circumstances of this particular application, it is found that, internally, despite having courtyards and private open spaces in close proximity to one another (ie. in the case of Units 9, 10 and 11), the level of visual privacy afforded is acceptable given the opportunities for landscaping between each courtyard, the differing heights of each courtyard and the design of the balustrade surrounding each courtyard.

The building may cause some degree of overlooking into the adjoining private open spaces (balconies) of the Kahana Development to the east. The magnitude of overlooking is considered to be





		<p>acceptable in the circumstances of the development given the spatial separation and the minimal number of apartments that overlook one another. Therefore, the provision of visual privacy is satisfactory. It is also understood that the Kahana development may have been required to erect some form of privacy screening on the western edges of several balconies which appear to not have been erected. Such screens would have negated any privacy concerns.</p> <p>Overall, the buildings are designed in a manner that respects the privacy of surrounding and nearby developments.</p> <p>Accordingly, the development is found to satisfy this guideline of the ADG.</p>
<b>Pedestrian Access and entries</b>	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p><b>Consistent</b></p> <p>The proposed pedestrian entry points into the development are visually and physically accessible to the community.</p> <p>The site is not of a scale nor configuration that would require the provision of through-site links.</p>
<b>Vehicle Access</b>	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p><b>Consistent</b></p> <p>The issue of vehicle access has been a highly contentious issue during the assessment of this application with particular regard to public safety and alternative vehicular access through the Oliver</p>



		<p>Street carpark.</p> <p>As discussed elsewhere in this report, Council's Traffic Engineers have reviewed this issue and raised no objections subject to conditions on the location of the driveway crossing onto Lawrence Street and are satisfied that the proposal will not have adverse safety impacts on pedestrians.</p> <p>Similarly, in other parts of this report it is detailed that the site has a legal access right onto Lawrence Street.</p>
<b>Bicycle and Car Parking</b>	<p>For development in the following locations:</p> <ul style="list-style-type: none"> <li>On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p><b>Consistent</b></p> <p>The application provides a compliant provision of car parking for the residential, visitor and retail uses of the site, in accordance with Appendix H of the WDCP 2011.</p>
<b>Part 4 Designing the Building</b>		
<b>Amenity</b>		
<b>Solar and Daylight Access</b>	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space;</p> <ul style="list-style-type: none"> <li>Living rooms and private open spaces of at</li> </ul>	<p><b>Consistent</b></p> <p>18 out of 23 apartments in the building (78.2%) achieve a compliant provision of solar and</p>



	<p>least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.</p> <ul style="list-style-type: none"><li>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter</li></ul>	<p>daylight access in accordance with the guidelines.</p> <p>Given the orientation of the building, there are only 3 south-facing apartments (3%) that receive no direct sunlight in mid-winter.</p>												
<b>Natural Ventilation</b>	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"><li>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</li><li>Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</li></ul>	<p><b>Consistent</b></p> <p>16 out of 23 apartments (69.5%) are naturally cross ventilated.</p> <p>2 out of 16 cross ventilated apartments have a depth of 18.2m, varying the guideline by 200mm.</p> <p>This level of variation is considered to be acceptable. In the event that the level of variation was not considered to be acceptable, this would reduce the number of cross ventilated units in the development to 14 out of 23, which still complies with the requirement of the guideline.</p>												
<b>Ceiling Heights</b>	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>If located in mixed used</td><td>2.7m for main living area floor</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	If located in mixed used	2.7m for main living area floor	<p><b>Consistent</b></p> <p>Each apartment has a satisfactory floor-to-ceiling height.</p>
Minimum ceiling height														
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
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	<table><tr><td>areas</td><td>2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr></table>	areas	2.4m for second floor, where its area does not exceed 50% of the apartment area									
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<b>Apartment Size and Layout</b>	<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50m<sup>2</sup></td></tr><tr><td>2 bedroom</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedroom</td><td>90m<sup>2</sup></td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p> <p>Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space).</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"><li>• 3.6m for studio and 1 bedroom apartments</li><li>• 4m for 2 and 3 bedroom apartments</li></ul> <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	Apartment type	Minimum internal area	Studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	<p><b>Consistent</b></p> <p>Each apartment in the development is of a scale larger than both the minimum internal area permitted via the SEPP and the standard apartment size.</p>
Apartment type	Minimum internal area											
Studio	35m <sup>2</sup>											
1 bedroom	50m <sup>2</sup>											
2 bedroom	70m <sup>2</sup>											
3 bedroom	90m <sup>2</sup>											
<b>Private Open Space and Balconies</b>	<p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td><td>-</td></tr></table>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m <sup>2</sup>	-	<p><b>Consistent</b></p> <p>Each apartment has a satisfactory provision of private open space. The size of each balcony and courtyard proposed is</p>				
Dwelling Type	Minimum Area	Minimum Depth										
Studio apartments	4m <sup>2</sup>	-										



	<table><tr><td>1 bedroom apartments</td><td>8m<sup>2</sup></td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m<sup>2</sup></td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m<sup>2</sup></td><td>2.4m</td></tr></table> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3m.</p>	1 bedroom apartments	8m <sup>2</sup>	2m	2 bedroom apartments	10m <sup>2</sup>	2m	3+ bedroom apartments	12m <sup>2</sup>	2.4m	significantly larger than the minimum required area.	
1 bedroom apartments	8m <sup>2</sup>	2m										
2 bedroom apartments	10m <sup>2</sup>	2m										
3+ bedroom apartments	12m <sup>2</sup>	2.4m										
<b>Common Circulation and Spaces</b>	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<b>Consistent</b> No circulation core within the development services more than eight apartments on the same level.										
<b>Storage</b>	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td></tr><tr><td>1 bedroom apartments</td><td>6m<sup>2</sup></td></tr><tr><td>2 bedroom apartments</td><td>8m<sup>2</sup></td></tr><tr><td>3+ bedroom apartments</td><td>10m<sup>2</sup></td></tr></table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling Type	Storage size volume	Studio apartments	4m <sup>2</sup>	1 bedroom apartments	6m <sup>2</sup>	2 bedroom apartments	8m <sup>2</sup>	3+ bedroom apartments	10m <sup>2</sup>	<b>Consistent</b> Each apartment has a satisfactory provision of storage both in the form of kitchen, bathroom and robe storage, and in the form of a storage cage located in the ground floor carparking area.
Dwelling Type	Storage size volume											
Studio apartments	4m <sup>2</sup>											
1 bedroom apartments	6m <sup>2</sup>											
2 bedroom apartments	8m <sup>2</sup>											
3+ bedroom apartments	10m <sup>2</sup>											
<b>Acoustic Privacy</b>	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms,	<b>Consistent</b> The building is designed in such a manner that the plant services and driveway accesses will not give rise to adverse or unreasonable acoustic intrusion to occupants of the subject development or adjoining sites.										
<b>Noise and Pollution</b>	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	<b>Consistent</b> The architecture of the building and the orientation of spaces and roof configuration is considered to be acceptable to provide security against unreasonable and adverse noise pollution and noise transmission.										
<b>Configuration</b>												
<b>Apartment Mix</b>	Ensure the development provides a range of	<b>Consistent</b>										



	apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	<p>The development comprises of two 1-bedroom apartments, fourteen-2 bedroom apartments and seven-3 bedroom apartments. The apartment mix proposed is considered to be appropriate within the context of Freshwater Village where dwelling sizes range from studios to large detached dwelling houses with 5+ bedrooms.</p> <p>The scale of the development proposed is considered appropriate in supporting the needs of the community both at present and into the future.</p>
<b>Facades</b>	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	<p><b>Consistent</b></p> <p>The proposed facade treatment of the building is appropriate for the context of the streetscape and will present as a highly modulated and well proportioned development that will create visual interest and contribute to the Lawrence Street character.</p>
<b>Roof Design</b>	<p>Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features.</p> <p>Test whether the roof space can be maximised for residential accommodation and open space.</p>	<p><b>Consistent</b></p> <p>The proposed roof design is satisfactory and cannot be maximised for residential accommodation and open space without significant amendment.</p> <p>The roof design is not dissimilar to the roofs of other surrounding developments.</p>
<b>Landscape Design</b>	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	<p><b>Consistent</b></p> <p>The documentation accompanying the development application includes a comprehensive</p>





		landscape plan that responds well to the site and its context. The landscape plan is endorsed by recommended Condition No.1 of this consent.																																			
<b>Planting on Structures</b>	<p>When planting on structures the following are recommended as minimum standards for a range of plant sizes:</p> <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m<sup>3</sup></td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m<sup>3</sup></td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m<sup>3</sup></td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m <sup>3</sup>	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m <sup>3</sup>	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m <sup>3</sup>	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		<p><b>Consistent</b></p> <p>The predominant area of planting on structures is along the communal pathway on the podium of the building. The landscape plans accompanying the application detail that the raised planters surrounding the pathway will be 1100mm in height and at variable widths.</p> <p>Raised planters of this scale and the landscaped area to the rear of the site result in opportunities for landscaping of varying species, scale and densities that will contribute to enhancing the aesthetic of the site.</p>
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																																	
Large Trees	12-18m high, up to 16m crown spread at maturity	150m <sup>3</sup>	1,200mm	10m x 10m or equivalent																																	
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Shrubs			500-600mm																																		
Ground Cover			300-450mm																																		
Turf			200mm																																		
<b>Universal Design</b>	Developments are to achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.	<p><b>Consistent</b></p> <p>More than 20% of the total apartments proposed incorporate silver level universal design features identified in the Livable Housing Guideline.</p>																																			
<b>Adaptive Reuse</b>	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	<p><b>Not Applicable</b></p> <p>The application does not seek to retain and adapt any existing parts of the existing buildings on site and thereby, adaptive reuse is not applicable to the assessment of this application.</p>																																			



<b>Mixed Use</b>	<p>Can the development be accessed through public transport and does it positively contribute to the public domain?</p> <p>Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.</p>	<p><b>Consistent</b></p> <p>The proposed development is for a shop top housing building which is a form of mixed use development. Given proximity to other amenities in the streetscape and to public transport, it is found that the development satisfies this requirement.</p> <p>The ground floor of the building is used for retail, infrastructure and car parking purposes only. There is no residential use on the ground floor.</p>
<b>Awnings and Signage</b>	<p>Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.</p> <p>Signage must respond to the existing streetscape character and context.</p>	<p><b>Consistent</b></p> <p>The proposed awning design is considered to be acceptable for the context of the site and will contribute to providing cover to pedestrians along Lawrence Street.</p> <p>No signage is proposed as a part of this application.</p>
<b>Performance</b>		
<b>Energy Efficiency</b>	<p>Have the requirements in the BASIX certificate been shown in the submitted plans?</p>	<p><b>Consistent</b></p> <p>BASIX requirements have been addressed in the application documentation and in this report.</p>
<b>Water Management and Conservation</b>	<p>Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?</p>	<p><b>Consistent</b></p> <p>The application has been reviewed by Council's Water Management Officer whom has raised no objections to the proposed development, subject to conditions as recommended.</p>
<b>Waste Management</b>	<p>Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.</p>	<p><b>Consistent</b></p> <p>The waste management plans supplied are satisfactory.</p>
<b>Building</b>	<p>Incorporates a design and material selection that</p>	<p><b>Consistent</b></p>



<b>Maintenance</b>	ensures the longevity and sustainability of the building.	The material selection of the building facade is appropriate for the coastal climate of freshwater to ensure the longevous nature of its quality and negating the requirement for any frequent building maintenance.
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#### STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

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

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

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

#### Comment:

The development application is not being refused on any grounds stipulated in Clause 30 of SEPP 65.

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

- (a) the design quality principles, and*
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.*

*(3) To remove doubt:*

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and*
- (b) the design criteria specified in subclause (1) are standards to which clause 4.15C (2) of the Act applies.*

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

#### Comment:

The assessment of this application has found that the proposed shop top housing development is consistent with the design quality principles and objectives of the Apartment Design Guide.





### SEPP (Infrastructure) 2007

#### Ausgrid

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

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

**Comment:** The proposal was referred to Ausgrid. Ausgrid responded to the proposed development and provided a number of conditions which are included in the recommendations of this report.

### Warringah Local Environmental Plan 2011

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

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	Max. 13.4m	Max. 21.8%	No

#### Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

#### Detailed Assessment

##### Zone B2 Local Centre

The proposed development is for the construction of a *shop top housing* development which is



permitted with consent upon the land, but conversely development for the purpose of *residential accommodation* (i.e. a residential flat building) is a prohibited development.

The prevailing environmental planning instrument to define shop top housing is the Warringah Local Environmental Plan 2011, defined as follows:

#### Definition of Use

**"Shop top housing"** means one or more dwellings located above ground floor retail premises or business premises. Shop top housing is a type of residential accommodation - see the definition of that term in this Dictionary.

And residential accommodation is defined as:

**"Residential accommodation"** means a building or place used predominantly as a place of residence, and includes any of the following:

.....  
**(m) shop top housing,**

but does not include tourist and visitor accommodation or caravan parks.

(note: for the purpose of this report, it is not necessary to extract the lengthy definition of residential accommodation beyond that of the above).

There is an evident conflict between the permissible and prohibited land uses, and it is therefore crucial to establish that the proposed development is in-fact *shop top housing*.

#### Relevant Caselaw

In consideration of the most suitable definition for the type of development that is proposed, reference is made to various caselaw established in the Land and Environment Court of NSW, particularly:

- *Hrsto v Canterbury City Council* (No 2) [2014] NSWLEC 121 - **Hrsto**
- *Acro Iris Trading Pty Ltd v North Sydney Council* [2015] NSWLEC 1113 - **Acro**
- *Luxcon Developments No 6 Pty Ltd v Woollahra Municipal Council* [2017] NSWLEC 1426 - **Luxcon**
- *Chamwell Pty Limited v Strathfield Council* [2007] NSWLEC 114 - **Chamwell**

In *Hrsto* his Honour Sheahan J held that in order for a building to be characterised as shop top housing it must satisfy the following tests (summarised):

- A dwelling must be in the same building as the ground floor retail premises or business premises;
- The floor of the residential dwelling needs to be at a level higher than the top most part of the ground floor retail or business premises;
- The residential dwellings need not be directly above the ground floor retail premises (lateral displacement); and
- The dominant use of the ground floor space needs to be classified as a retail or business premises.

For the purposes of this assessment, *Hrsto* can be summarised to find that for the purposes of shop top housing, the residential component must be of a level physically higher than the ground floor retail



premises, but need not be *directly* above it (i.e. within the same floorplate configuration).

*Acro* elaborates on the findings of Sheahan J in *Hrsto* as follows (extract par21):

*That matter was dealt with by Sheahan J in Hrsto v Canterbury City Council (No 2) [2014] NSWLEC 121. His Honour held that it was necessary for the purpose of the definition of shop top housing for the lowest point of any dwelling that was proposed to be regarded as shop top housing to be entirely above ground floor retail premises or business premises, that is there have to be a vertical surmounting of the shop top housing from the underlying qualifying premises. However, importantly for these proceedings, his Honour also made it clear that it was possible for there to be a lateral displacement in such circumstances, in that there did not need to be a true directly vertical correlation between the shop top housing and the qualifying premises at the lower level.* (emphasis added)

Importantly, in *Acro* reference is made to *Blackmore Design Group Pty Ltd v Manly Council [2014] NSWLEC 164* whereby it is found that for the definition of a dwelling, that the parking spaces do not form a part of the dwelling. In *Acro* it was held that (summarised):

- *Parking spaces do not form part of the definition of a dwelling and therefore residential car spaces are permissible on the ground floor of a shop top housing development, where the dominant use of the level is for retail or business premises;*
- *It is possible for a single building to have two ground levels; provided that each ground level relevantly addresses a street frontage; and*
- *Commercial car parking spaces which form part of the strata lot for retail or business premises could be said to be part of the retail or business premises of the purposes of the definition of shop top housing.*

The findings in *Luxcon* and *Chamwell* provide clarity of the above caselaw but for the purposes of this report and consideration need not be summarised.

### Conclusion on meeting the Shop-top Housing Definition

In furtherance of the definitions, caselaw and the legal opinions submitted by the Applicant to accompany the development application, it is considered that the development is suitably defined as shop top housing as intended by the WLEP 2011 as:

1. The ground floor of the development addresses the Lawrence Street frontage and can therefore, for the purposes of *shop top housing*, be defined as the "ground floor";
2. The dominant use of the ground floor of the proposed development is for retail. The ground floor includes the retail premises, car parking, storage, loading dock and waste facilities which are all for the purpose of retail in accordance with the findings in *Chamwell*. Therefore the dominant use of the ground floor is for "ground floor retail" in accordance with the definition of *shop top housing*;
3. All of the proposed dwellings are located above "ground floor retail" premises and are in the same building;
4. The residential levels are at a floor level higher than that of the "ground floor retail" premises;
5. All of the proposed dwellings are located directly or immediately above the "ground floor retail" premises, albeit there being a lateral displacement in some locations.
6. The residential car parking spaces on the ground floor level do not form part of the definition of "dwelling" and are therefore permissible on the ground floor level.





Accordingly, it is surmised that the development as proposed can be suitably defined as a *shop top housing* development for the purposes of the WLEP 2011 definition.

#### 4.6 Exceptions to development standards

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

Requirement:	11.0m
Proposed:	Maximum building height: 12.7m
	Maximum plant height: 13.4m
Is the planning control in question a development standard?	Yes
Is the non-compliance with Clause 4.3 - Height of Buildings a Numerical and / or Performance based variation?	Numerical
What is the percentage variation:	Up to 21.8%

#### Description of non-complying elements of the development

The built form of the proposed shop top housing development has been separated into three two storey pavilions atop of a one single storey podium level. Atop of each pavilion is its own plant equipment and lift overrun. Given the topography of the land and the varying floor levels/building heights across the development, there is no consistent level of non-compliance; rather the quantum of building height that breaches the Height of Buildings standard varies across the site and differs in magnitude for buildings A, B and C. Generally, the area of non-compliance is restricted to the eastern edges of the building.

##### Building A

Building A fronts Lawrence Street and breaches the development standard by 1.3m in the north eastern corner and 0.8m in the south eastern corner, equating to a maximum contravention to the control of 11.8%. Additional to the building height variation, the plant equipment on the roof of Building A breaches the height by up to 2.3m, equating to a contravention of 20.9%.

Therefore, it can be said that the highest portion of Building A is the plant equipment at a maximum height of 13.3m equating to a 20.9% variation.

##### Building B

Building B is the centre building of the development and breaches the development standard by 1.7m in the north-eastern corner and 0.5m in the north-western corner, equating to a maximum contravention of 15.5%. Similarly to Building A, the plant equipment on the roof is of a greater height than the building height, seeking a contravention of 2.0m equating to an 18.2% variation.

Therefore, it can also be said that the highest portion of Building B is the plant equipment at a maximum height of 13.0m equating to a maximum 18.2% variation.

##### Building C

Building C is the northernmost building at the rear of the site. The building exceeds the maximum height by up to 1.3m in the north-eastern corner and up to 0.9m in the south-eastern corner, equating to a



maximum contravention of 11.8%. The plant equipment atop of Building C breaches the standard by 2.4m equating to a variation of 21.8%.

Therefore, it can be said that throughout the development as a whole, the plant equipment on the roof of each pavilion is the highest element of the proposal, with the most significant breach being present on the north-eastern corner of Building B. The breaches for the development as a whole are shown on the diagrammatic height plan drawing below:



**Figure 1** - Proposed development overlaid with 11m height plane. *Source: Nettletontribe*

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the WLEP 2011. The assessment is detailed as follows:

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

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the WLEP 2011 is a development standard.

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

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

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

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

Comment:

The proposed development is considered to be of a scale, form and height that is compatible with surrounding and nearby developments. The building is predominantly beneath the maximum permissible height as evident in the above diagram and achieves a total height that is not





inconsistent with other recent shop top housing and residential flat building developments within the Freshwater Village locality. The scale and massing of the proposed building is broken into three modular forms which both enhances the internal amenity for occupants but also improves the aesthetic and form when viewed from other surrounding properties. The scale of the modulated forms is similar to those in the adjoining development to the east.

Accordingly, it is found that the proposed development is compatible with the height and scale of other surrounding developments. The predominant compliance achieved by the building demonstrates a built form that is also likely to be compatible with any future development on surrounding lands.

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

Comment:

The proposed development is not found to have any unreasonable nor detrimental amenity impacts upon adjoining lands by virtue of visual impact, disruption of views, loss of privacy and loss of solar access.

The visual impact of the proposal is found to be acceptable in the context of the site and the high quality architecture will be consistent with the desired future character of Lawrence Street.

No significant or noteworthy views are present from the immediate surrounds and therefore, with consideration to the Planning Principles established in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140 (Tenacity)* the building will not give rise to any unreasonable view loss from surrounding public or private land.

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

Comment:

The development site is located in a highly urbanised area. The Freshwater Village locality is characterised by its coastal environment, and it is found that the development as proposed will not have any negative impact upon this character. Conversely, it is found that the quality of the architecture will enhance the streetscape and the character.

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

Comment:

Throughout this report, it has been established that the southern facade of the development will be complementary and enhancing to the Lawrence Street streetscape, however consideration must also be given to the buildings facade to Council's Oliver Street carpark to the north-west.

The site has an 18m long shared boundary with the carpark (the width of the carpark) and a wall obtaining a height of 9.3m for the entirety of the width. The wall is setback 2.4m from the property boundary. Despite the scale of the wall it is found that the visual impact is acceptable given the use of the adjoining land as a carpark and (then further) an electrical substation and telecommunications building. The comprehensive landscaping plan accompanying the application demonstrates an ability to 'plant out' this area in a manner that will substantially reduce the visual impact of the building, and will enhance the Oliver Street carpark through the additional of formalised landscaping.

Accordingly, it is found that the development as proposed will be of acceptable visual impact





when viewed from public places.

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

In assessing the developments non-compliance, consideration must be given to its consistency with the underlying objectives of the B2 Local Centre zone.

#### *The underlying objectives of the B2 Local Centre zone*

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

##### Comment:

Within the B2 Local Centre zone, development for the purposes of shop top housing is permitted with consent, and is relatively consistent with the predominant streetscape character of Lawrence Street. This proposed development provides two retail premises addressing Lawrence Street (185m<sup>2</sup>) and residential uses above. Whilst it is acknowledged that the retail premises in the development could be enlarged by adding additional retail floorspace inwards of the site, the amenity of these premises would be highly undesirable as they would have zero natural solar access and views outwards into the carpark.

Accordingly, it is found that the level of retail premises provided in the development are sufficient to contribute to serving the needs of people who live in, work in and visit the local area.

- *To encourage employment opportunities in accessible locations.*

##### Comment:

The location of the site is highly desirable and benefits from surrounding amenities and accessibility to public transport. This application does not stipulate the specific uses of the retail premises as these will be the subject of future development applications. Accordingly, in so far as this consent can permit, the provision of employment opportunities is acceptable.

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

##### Comment:

The site is within a location that is well serviced by public transport, and Lawrence Street specifically is dominated by pedestrians and cyclists. This development itself will not impact on the public transport patronage nor will it discourage walking and cycling.

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

##### Comment:

The frontage of the proposed development is considered to be appropriate and commensurate to the scale of pedestrians to ensure that the development is safe, comfortable and interesting. It is noted that concern has been raised in submissions regarding the provision of a driveway crossing onto Lawrence Street, however this crossing has been found as necessary, acceptable and Council's Traffic Engineers have imposed conditions in the recommendations of the report to ensure a high level of pedestrian safety.

- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

##### Comment:



The scale of the proposed development is compatible with surrounding developments and with what is reasonably envisaged by the current planning controls. The quality of the architecture will create an urban form that will enhance the streetscape and overall appearance of the site. The proposed landscaped treatment of the site will create a diverse and interesting aesthetic when contrasted against the white walls of the building and will satisfy this objective.

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

Comment:

The proposed variation sought to the Height of Buildings development standard is not considered to give rise to conflict between adjoining sites both within the same and different zones. The development does not give rise to any unreasonable amenity or environmental impacts, nor does it impinge upon the development potential of adjoining lands. Accordingly the development is found to satisfy this objective.

**Is the variation to the development standard consistent with the objectives of Clause 4.6 of the WLEP 2011?**

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

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

Comment:

In consideration of whether an appropriate degree of flexibility to a development standard is warranted in the circumstances of the application reference must be made to the Planning Principle established in *Veloshin v Randwick Council* [2007] NSWLEC 428 (*Veloshin*) where Senior Commissioner Roseth establishes a framework of questions regarding the assessment of the height and bulk of a development.

- 1. *Are the impacts consistent with impacts that may be reasonably expected under the controls?*
- 2. *Does the area have a predominant existing character and are the planning controls likely to maintain it? Does the proposal fit into the character of the area?*
- 3. *Is the proposal consistent with the bulk and character intended by the planning controls?*
- 4. *Does the proposal look appropriate in its context?*

**1. Are the impacts consistent with impacts that may be reasonably expected under the controls?**

Firstly, it must be established if the impacts of the development are consistent with the impacts that may be reasonably expected under the planning controls. In this particular circumstance, it is found that the scale of the building is compatible with surrounding developments and is of a height that could reasonably be expected under the planning controls (i.e. three storeys). It has not been found that the impact of the variation to the building height is of such a magnitude that would be of detriment to the amenity of residents or the environment of the area, and it could be similarly assumed that a building that were to comply with the height control could have an equal (if not greater) level of amenity impact. Therefore, given that the impacts of the development are consistent with the impacts that should be expected by development on the site, even if the





building were to fully comply with the height standard, the development is found to satisfy the first step.

**2. Does the area have a predominant existing character and are the planning controls likely to maintain it? Does the proposal fit into the character of the area?**

Secondly, the predominant existing character of the area must be considered and whether:

- (a) the development is compatible with the character of the area; and
- (b) the current planning controls are likely to maintain this established character.

The Lawrence Street streetscape has been undergoing significant evolution in recent years; predominantly from 2016 onwards (refer to Site History). Previously, the area had been characterised by an eclectic and somewhat haphazard arrangement of buildings of varying age, size and construction with varying architectural merit. At best, this character could be described as small scale mixed use developments that address the street. Inevitably, many of these sites are under-developed with regards to their potential under current planning controls, hence this subject development application.

Of recent years there has been an emerging trend for the construction of largeshop top housing and residential flat building developments within the immediate vicinity of the subject site. These developments are predominantly 2 to 3 storeys in height and accommodate a substantial portion of the land they sit upon. These developments are found to be generally compatible with the current planning controls pertaining to the land.

The building proposed is a three storey shop top housing development that is substantially separated into pavilion style elements to reduce the visual massing of the overall development. Despite varying the height control, it is found that the development is of a form that is consistent with the current planning controls of the area and compatible with the scale of surrounding developments.

Insofar as the architectural treatment of the building is concerned, it is considered that the development will significantly enhance the streetscape and will appropriately contribute to the planning of surrounding under-developed sites.

Accordingly, it is found that the development is compatible with the current prevailing character of the area in accordance with the current planning controls.

**3. Is the proposal consistent with the bulk and character intended by the planning controls?**

The third question is somewhat answered by the consideration of question two, whereby the existing older character is outdated by virtue of the development potential of the land under current controls, thereby creating a new prevailing character. For the purposes of this assessment, it is not necessary to answer question 3.

**4. Does the proposal look appropriate in its context?**

Finally,, it must be considered as to whether the proposal looks appropriate in its context. The assessment of this proposal has found that the development is a well designed and attractive development that will enhance the Lawrence Street streetscape compared to the existing outdated development on the site. The scale, architecture and form of the development is not inconsistent with other developments on surrounding land and thereby it can be surmised that the development, as proposed, looks appropriate in its context.

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





*circumstances.*

Comment:

Within the scope of the current design scheme, the only opportunities available to achieve a development beneath the 11m height plane would be to:

- (a) eliminate the second storey of the building in its entirety; or
- (b) sink the building into the ground.

Both of these options would likely result in other issues beyond the scope of consideration in this current application. In any regard, enforcing strict compliance with the development standard could significantly compromise the architectural integrity of the proposal and the benefits that this design poses compared to other design alternatives (such as the substantial setbacks proposed between buildings and the appropriate positioning of the podium elements).

The development is found to satisfy the zoning objectives of the B2 Local Centre zone and is considered to significantly contribute to the enhancement and modernisation of Lawrence Street.

Accordingly, it is found that the scheme as proposed warrant flexibility to the planning controls.

(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:

In *Wehbe v Pittwater Council* [2007] NSWLEC 827 (**Wehbe**) CJ Preston formulated five methods in which a development standard can be shown to be unreasonable or unnecessary in the circumstances of particular cases.

The methods in *Wehbe* can be summarised as:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (Method 1).
2. The underlying objective or purpose of the standard is not relevant to the development, and therefore compliance is unnecessary (Method 2).
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Method 3).
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Method 4).
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary as it applies to the land



and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Method 5).

In the applicant's Clause 4.6 submission they summarise the recent judgement of *Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386 (Micaul)* whereby it is expressly noted that *the consent authority did not have to be directly satisfied that compliance with the development standard was unreasonable or unnecessary but that the applicant's written request adequately addresses the matters in Clause 4.6(3)(a)*. Therefore the assessment of Clause 4.6(3)(a) of the WLEP 2011 is derived from the applicant's submitted Clause 4.6 Variation by Ethos Urban dated 19 December 2017.

The applicant's written request comprehensively addresses the objectives of the clause, the zone and the methods of *Wehbe* and concludes with the following statements that the Clause 4.6 variation demonstrates that:

- "Compliance with the Height of Buildings development standard is unreasonable and unnecessary in the circumstances of the case, given that the objectives of the maximum height development standard are achieved notwithstanding the variation to the numerical control;
- There are sufficient environmental planning grounds to justify contravention of the standard, as the proposed variation:
  - Is consistent with the first objective of Clause 4.6 of WLEP 2011, the degree of flexibility required by the consent authority to support the minor variations to the maximum building height in this instance is considered both appropriate, and particular to the circumstances of the development;
  - Is consistent with the second objective of Clause 4.6 of WLEP 2011, in achieving better outcomes for and from the proposed development, notwithstanding the minor increase in building height;
- It is in the public interest as the proposal remains consistent with the objectives of the B2 Local Centre zone and Height of Building development standard;
- The proposal is compatible with the envisioned scale and character of the area and will not have adverse amenity impacts on surrounding land;
- There is no public benefit in maintaining the building height development standard adopted by the environmental planning instrument for this site; and
- The Secretary's concurrence can be obtained, as contravention of the development standard does not raise any matter of significance for State and regional planning."

Accordingly, with regard to *Micaul*, it is considered that the development as proposed with accompanying documentation satisfies Clause 4.6(3).

(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:

It is found that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) as 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 B2 Local Centre zone in the WLEP 2011.

*(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 where the variation to a numerical standard is not greater than 10%. Following the release of PS 18-003, Council received correspondence from a delegate of the Secretary which granted Council staff, for 12 months from 1 March 2018, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary the building height standard by more than 10%.

As this development is not for a Class 1 building and varies the development standard by up to 21.8% (inter alia other reasons) the application is to be determined by the Northern Beaches Local Planning Panel (NBLPP).

## Warringah Development Control Plan

### Built Form Controls

Part B *Built Form Controls* of the DCP does not apply to land described in Part G *Special Area Controls*. Controls pertaining to the desired built form can be found later in this report under Part G5.

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D4 Electromagnetic Radiation	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes





Clause	Compliance with Requirements	Consistency Aims/Objectives
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes
F1 Local and Neighbourhood Centres	Yes	Yes
G5 Freshwater Village	Yes	Yes
1. Built form in Freshwater	Yes	Yes
2. Number of storeys	Yes	Yes
3. Street activation	Yes	Yes
4. Street facades and shopfront design	Yes	Yes
5. Access and loading	Yes	Yes
6. Lighting	Yes	Yes
7. Safety and security	Yes	Yes
8. Signage	N/A	N/A
9. Awnings	Yes	Yes
10. Front setback	Yes	Yes
11. Side and rear setbacks	Yes	Yes
13. Roofs and building form	Yes	Yes
14. Building massing	Yes	Yes
15. Building sustainability	Yes	Yes
16. Materials and colours	Yes	Yes
17. Active travel links	Yes	Yes

#### Detailed Assessment

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

The proposed vehicular access point into the site from Lawrence Street has been assessed by Council's Traffic Engineers.

Council's Traffic Engineers note that whilst it is preferable to have no access points onto Lawrence



Street, the proposed driveway location is acceptable.

The issue of driveway access onto Lawrence Street and the potential traffic and safety issues this may give rise to were raised by respondents to the public notification of the application. The majority of submissions suggested that Council refuse vehicular access in its entirety, whilst a minority suggested allowing vehicular access via the Oliver Street carpark to the north west.

Several other submissions noted that the driveways for this development and the adjoining development at 21 Lawrence Street (DA2017/1284 which is currently under consideration by Council) should be integrated. The two applicants have chosen not to combine the driveway crossings of the two developments that are side by side; thereby negating the possibility for a shared driveway arrangement in this scheme. In any event, it is unlikely that this solution could have been feasible as it would result in one development being reliant upon the other and mutually consistent construction and occupancy schedule. Additionally, a driveway crossing of this scale would have likely been 8m wide or so which would be unsuitable for the streetscape.

There are two primary factors that must be considered with regards to vehicular access:

- The site has a legal vehicular access right to a public road (Lawrence Street) - Section 6 *Right of access to public road by owners of adjoining land* in the Roads Act 1993; and
- At present the Oliver Street carpark is Community Land and not Operational Land and accordingly, the developer of the site cannot obtain vehicular access through the carpark for the proposed development.

Therefore, the only means of vehicular access available to the site is via Lawrence Street, and the developer is entitled to utilise this access for their development.

It is acknowledged that having some or all vehicular access via the Oliver Street carpark may reduce the impact on Lawrence Street (however it is yet to be analysed as to whether the Oliver Street carpark could reasonably cope with the additional traffic load). Council has requested that the applicant future-proof the development by providing a portion of the wall adjoining the carpark as able to be 'knocked-through' so that in future, if and when the Oliver Street carpark is to be reclassified and vehicular access is permitted across it, the developer may lodge a new development application for this access and for the potential construction of a new retail premises in place of the existing driveway access from Lawrence Street.

Accordingly, the proposed provision of vehicular access is supported at present and it is considered that the site is reasonably future-proofed to provide alternative vehicular access if and when the Oliver Street carpark is reclassified.

### C3 Parking Facilities

- To provide adequate off street carparking.

#### Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Shop (retail)	1 space / 16.4m <sup>2</sup> GLFA	81m <sup>2</sup> +98m <sup>2</sup> = 179m <sup>2</sup> , therefore	11 spaces + 1 loading dock	nil



		10.9 spaces required		
1, 2 and 3 bedroom dwelling (apartment)	- 1 space per 1 bedroom dwelling;  - 1.2 spaces per 2 bedroom dwelling;  - 1.5 spaces per 3 bedroom dwelling;  - 1 visitor space per 5 units.	2x1 bedroom; 14x2 bedroom; 7x3 bedrooms; therefore 30 residential spaces and 5 visitor spaces required	35 spaces	nil
<b>Total</b>		46	46	nil

The proposed provision and configuration of car parking complies with the requirements of Part C3 and Appendix H of the WDCP 2011.

## D2 Private Open Space

The provision of private open space is governed by the prevailing SEPP 65 and accompanying ADG. Notwithstanding the applicability of this clause, the application still meets the objectives of this Part D2.

## D3 Noise

In the assessment of the application it was found that there is insufficient detail pertaining to the acoustic treatment of the ground level carpark to ensure that the openings on the northern and southern end (particularly northern) do not give rise to adverse acoustic intrusion to surrounding properties. This matter can reasonably be resolved by way of condition and has been addressed by Council's Environmental Health Officer.

## D4 Electromagnetic Radiation

The assessment of this application has taken into consideration the EMF survey accompanying the application and the comments made by Council's Environmental Health Officer. Based on the advice received, it is considered that an appropriate level of safety will be afforded by the development to residents of the development and the community in general from electromagnetic radiation.

## D7 Views

Given the topography of the subject site and surrounding land and the lack of any *iconic* views as defined in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* it is found that the proposed development will not give rise to any unreasonable nor adverse view loss impacts from surrounding public and private properties.

## E7 Development on land adjoining public open space





The development site adjoins the Oliver Street carpark to the west which is zoned RE1 Public Recreation pursuant to the WLEP 2011. Whilst not strictly being parkland, bushland reserve or "public open spaces," the land is nonetheless zoned for public purposes, and thereby an assessment of the development against the control objects follows:

- *To protect and preserve bushland adjoining parks, bushland reserves and other public open spaces.*  
  
Comment: The development will not result in the carpark being unreasonably or adversely impacted upon by virtue of its current and future potential, thereby satisfying this objective.
- *To ensure that development responds to its adjacent surroundings to preserve and enhance the natural qualities of the environment.*  
  
Comment: Land surrounding the subject site consists of shop top housing developments, residential flat buildings and carparks. Therefore, the development of this site for the purposes of a shop top housing development responds to its surrounding environment and is consistent with what the current planning controls envision the use of the site to be.
- *Development on land adjoining open space is to complement the landscape character and public use and enjoyment of the adjoining parks, bushland reserves and other public open spaces.*  
  
Comment: This clause is not applicable as the adjoining public land is a carpark.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP 2011 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **F1 Local and Neighbourhood Centres**

An assessment against the objectives of Part F1 Local and Neighbourhood Retail Centres of the WDCP 2011 follows:

- *To encourage good design and innovative architecture.*  
  
Comment:  
With consideration to the objectives of this part, it is found that the southern facade of the building to Lawrence Street requires the most attention.  
  
This particular facade has been designed in a manner that incorporates vertical and horizontal stepping, human proportions, podium landscaping, varying materials and a dynamic appearance in that the first floor elements can move and, at times, it is possible that persons could be on all three levels and visible from the streetscape.  
  
These elements cumulatively result in the proposal and the Lawrence Street facade being of a good design and innovative architecture.
- *To provide a safe and comfortable environment for pedestrians*  
  
Comment:  
The development includes an awning structure elevated some 3.5m above the footpath level



that provides weather shelter for pedestrians at a comfortable scale. It is not found that there are elements of the proposal that are overly dominating or imposing to such a magnitude that would be contrary to providing a safe and comfortable environment for pedestrians.

The vehicle crossing and driveway proposed has been assessed as satisfactory by Council's Traffic Engineers, subject to conditions.

- *To provide a range of small-scale shops and business uses at street level with offices or low-rise shop-top housing to create places with a village-like atmosphere.*

Comment:

The development provides for two new retail premises located at ground level and fronting onto Lawrence Street. These shops are reasonable in scale (one at 72m<sup>2</sup> and the other at 113m<sup>2</sup>) to cater for various types of businesses within the vicinity whilst being commensurately proportionate to that of other surrounding retail premises.

From Lawrence Street, the ground and first floor elements have a nil front setback to the Lawrence Street boundary, and the second floor is stepped back 5m from the same boundary to reduce the scale of the building from the public domain and to enhance the village-like atmosphere of the area.

- *To enhance the established scale and pattern of development and the continuity of existing streetscapes.*

Comment:

The proposed development is compatible by virtue of its scale in comparison with other surrounding recent developments in Freshwater Village and the wider vicinity, and is generally consistent with the current planning controls pertaining specifically to Freshwater Village, but also to shop top housing development throughout the state (pursuant to SEPP 65).

It is found that the building will contribute to the modernisation and urban renewal of Lawrence Street and will enhance the future planning by virtue of the proposed scale and pattern of development.

- *To enhance the public domain.*

Comment:

For the reasons above, it is found that the proposal will provide a well designed building with an attractive facade to Lawrence Street that provides retail opportunities for the community. Overall, the development is found to enhance the public domain and the requirements and intents of Part F1 Local and Neighbourhood Retail Centres.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP 2011 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### 1. Built form in Freshwater

Part B Built Form Controls of the WDCP 2011 does not apply to this development site, and the controls in Part G5 (1) prevail. The assessment of this application has found that the development complies with the numerical requirements of this clause and satisfies the accompanying objectives (1 - 5) as demonstrated throughout this report.



Accordingly, no further assessment on Part G5 (1) is required. Assessment has been undertaken for each component of Part G5 of the WDCP 2011, and commentary has been supplied where relevant.

### 3. Street activation

The southern facade of the development fronting Lawrence Street is predominantly composed of retail frontage that will reinforce and enhance the main street character of Lawrence Street. The non-active elements of the frontage include the driveway access, residential entry and an infrastructure closet. These non-active elements are essential to the development but, given the overall architecture of the proposal, do not detract from the street frontage and activation.

It is considered that overall, the development achieves an active, interesting and welcoming street frontage which will contribute to the enhancement of the Lawrence Street and Freshwater Village atmosphere in longevity.

### 5. Access and loading

This Clause includes a requirement which reads:

***R3. No additional vehicle or loading access is to be provided from Lawrence or Albert Streets.***

In the public exhibition period of this application many objectors noted that the development did not comply with this requirement.

Strictly speaking, the development is not providing any *additional* vehicle access onto Lawrence Street as it is relocating the existing crossing; however it is understood that this literal interpretation may not be the intent of the requirement.

In any event, it has already been established that the site has a legal access right to Lawrence Street as there is no other possible access point available at this time to the site, and therefore the development is found to be acceptable with regards to the consistency with this clause.

### 8. Signage

No signage is proposed as an element of this development application.

### THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

### CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

### POLICY CONTROLS

#### Warringah Section 94A Development Contribution Plan

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

The following monetary contributions are applicable:





Warringah Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 8,201,888		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 77,918
Section 94A Planning and Administration	0.05%	\$ 4,101
Total	1%	\$ 82,019

## CONCLUSION

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

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

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

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

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

The development of this site is inevitable with regards to the potential afforded to the land by virtue of the current planning controls. The development scheme proposed is for a shop top housing development with 2 retail premises and 23 residential apartments with associated parking and landscaping. The architecture of the building is of a high-quality and will be compatible the streetscape of Lawrence Street and the wider Freshwater Village.

The development is constrained by virtue of its limited vehicular access opportunities which require the buildings driveway to be located off Lawrence Street, which is inconsistent with the outcomes envisaged under the Freshwater Village DCP. This is the only access option, and whilst it is not preferable, it is satisfactory from a traffic and safety perspective. The issue of vehicle access is evidently crucial in the submissions received, and therefore it is found that the most suitable way for this development to progress in any magnitude is to ensure that, as early as at DA stage, the engineering and construction planning of the building incorporates the potential for a future access point to be



created from the northern end of the building into the Oliver Street carpark to the west. This then, in theory, could negate the necessity for the Lawrence Street crossing and provide the opportunity for an additional retail outlet (subject to future development application approvals). The issue of vehicle access is found to be satisfactorily addressed by the recommendations of this report.

The variations to Clause 4.3 Height of Buildings of the Warringah LEP 2011 has equally been the source of objection from the community. The site is subject to an 11m height limit and a maximum 3 storey control. The development breaches the 11m control in certain elements of the building, generally consequent of the sloping topography of the land. This assessment has found that the breach does not give rise to any unreasonable or adverse amenity impacts upon adjoining land and is generally of a scale and massing that is consistent with surrounding developments and the desired future character as established by the zone objectives.

The long history of this site and the years of designing the building and waiting for the reclassification of the Oliver Street carpark have left this site in an undeveloped state for an extended period of time. The scheme proposed is a suitable form of development for the lot and for Freshwater Village, and this assessment finds that the development application is worthy of approval by the Northern Beaches Local Planning Panel.

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

#### RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2017/1294 for Demolition works and the construction of a shop top housing development on land at Lot A DP 356986, 9 Lawrence Street, FRESHWATER, Lot CP SP 1172, 15 Lawrence Street, FRESHWATER, subject to the conditions printed below:

#### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
10524_DA-001 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-002 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-101 Issue C	26 April 2018	Nettleton Tribe Partnership Pty Ltd
10524_DA-102 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-103 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd



10524_DA-104 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-201 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-202 Issue C	26 April 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-203 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
10524_DA-301 Issue B	18 December 2017	Nettleton Tribe Partnership Pty Ltd
2416 LP-01 Issue B	5 December 2017	John Lock & Associates Landscape Architecture
2416 LP-02 Issue B	5 December 2017	John Lock & Associates Landscape Architecture
2417 LP-03 Issue B	5 December 2017	John Lock & Associates Landscape Architecture

**Reports / Documentation – All recommendations and requirements contained within:**

Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment and Tree Management Plan (ref:2911)	3 November 2017 (amended)	Redgum Horticultural
BCA Assessment Report - Rev. 01 (170401)	5 December 2017	Concise Certification
BASIX Certificate No. 881423M	11 December 2017	Eco Certificates Pty Ltd
DA Access Report	18 December 2017	Wall to Wall Design and Consulting Pty Ltd
Electromagnetic Field Survey	27 November 2017	EMR Surveys Pty Ltd
Stage 1 Preliminary Environmental Site Assessment (Ref:E30969Krpt)	16 November 2017	EIS (Environmental Investigation Services)
Geotechnical Investigation (Ref:22337SYrpt5)	9 November 2017	JK Geotechnics
NatHERS Certificate No. 0002271760	11 December 2017	Eco Certificates Pty Ltd
Assessment of Traffic, Transport and Parking Implications - Rev E (REF:17067)	December 2017	Transport and Traffic Planning Associates

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

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

Waste Management Plan		
Report Title	Dated	Prepared By
Operational Waste Management Plan Revision C	5 December 2017	Elephants Foot Recycling Solutions





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

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

2. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- o The street awning along Lawrence Street (southern boundary) is to extend for the width of the site.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	22 January 2018

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

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other Department, Authority or Body's.

4. **Prescribed Conditions**

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

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



- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

## 5. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.



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

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

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

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable





cover to any spa containing water and is to be consistent with the following;

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

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

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

#### 6. Temporary dewatering

Discharge from the sediment basin must achieve the following water quality targets in addition to any conditions/documentation of this consent and legislation including *Protection of The Environment Operations Act 1997*.

Parameter	Criterion	Method	Time Prior to Discharge
Oil and grease	None visible	Visual inspection	<1 hour
pH	6.5- 8.5	Probe/meter	<1 hour
Total Suspended Solids (TSS)	<50mg/L	Meter/grab sample measured as NTU	<1 hour

*Note: The correlation between NTU and TSS must be established by a NATA accredited laboratory prior to the commencement of dewatering activities.*

Dewatering must not occur until the above water quality parameters are met.

All records of water discharges and monitoring results are to be documented and kept on site. Copies of all records shall be provided to the appropriate regulatory authority, including Council, upon request.

Tailwater must be discharged to a stormwater pit and not spread over any road, footpath and the like.

Reason: Protection of the receiving environment



## FEES / CHARGES / CONTRIBUTIONS

### 7. Policy Controls

#### Northern Beaches Council Section 94A Development Contribution Plan

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

The following monetary contributions are applicable:

Northern Beaches Council Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 8,201,888.41		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 77,917.94
Section 94A Planning and Administration	0.05%	\$ 4,100.94
Total	1%	\$ 82,018.88

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

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

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

### 8. Security Bond

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

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

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

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



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

9. **Works Bonds**

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

A Bond of \$10,000 as security against any damage to Council's stormwater drainage system at the rear of the property and failure to complete the construction of stormwater drainage works as part of this consent.

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

A Bond of \$10,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter and any footpath works required as part of this consent.

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

A Bond of \$3,000 as security to ensure that there is no transmission of material, soil etc off the site and onto the public road and/or drainage systems.

(d) Construction, Excavation and Associated Works Bond (Failure to Remove Waste)

A bond of \$5,000 as security against damage to Council's road(s) fronting the site caused by the transport and disposal of materials and equipment to and from the site.

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

The developer/applicant must lodge with Council a Maintenance Bond of \$5,000 for the construction of the vehicle crossing, modification and extension of Council's stormwater drainage system in Lawrence Street, extension of Council kerb blister and associated streetscape works. The Maintenance Bond will only be refunded on completion of the Maintenance Period, if work has been completed in accordance with the approved plans to the satisfaction of Council.

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

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

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

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

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

Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Northern Beaches Council's "On-site Stormwater Detention Technical Specification" and the concept drawing by AJ Whipps Consulting Group, drawing number 20170228, drawings C00 to C10, dated 7 December 2017 are to be submitted to the Certifying Authority.

The drainage plans must also incorporate open style fences along the property boundaries to facilitate conveyance of any overland flows across the drainage easement. The open style fences are to be installed/built for the full width of the drainage easement. Existing ground surface levels within the drainage easement must be retained. Landscaping within the drainage easement is to consist of grass or turfing only.

Certification by a suitably qualified Civil Engineer, who has membership to the Institution of





Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering stating the stormwater drainage design and plans are in accordance with Council's "On-site Stormwater Detention Technical Specification" and all requirements of this condition.

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

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development. (DACENC03)

11. **Submission of Engineering Plans for Infrastructure Works on Council Roadway**  
Engineering plans are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The submission is to include four (4) copies of Civil Engineering plans for the design vehicle crossing, modification and extension of Council's stormwater drainage system in Lawrence Street, extension of Council kerb blister and associated streetscape works are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The above are to be designed and constructed in accordance with Council's specification for engineering works - AUS-SPEC #1 and Warringah Public Spaces Design Guidelines, policy no. STR-PR350.

The developer/applicant must lodge with Council a Maintenance Bond for the construction of \$5,000. The Maintenance Bond will only be refunded on completion of the Maintenance Period, if work has been completed in accordance with the approved plans and to the satisfaction of Council.

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

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

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

12. **Vehicle Driveway Gradients**  
Driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in Council's Minor Works Policy.

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

Reason: To ensure suitable vehicular access to private property

13. **Structures Located Adjacent to Council Pipeline or Council Easement**  
All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management Policy; in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification. Any proposed landscaping



within a Council easement or over a drainage system is to consist of ground cover or turf only (no trees are permitted).

Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure (DACENC21)

14. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required.

All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: Safety. (DACENC19)

15. **Detailed Design of Stormwater Quality System**

A certificate from a Civil Engineer, stating that the stormwater quality management system has been designed in accordance with the Civil & Stormwater Service Plans prepared by AJ Whipps Consulting Group dated December 2017 and the Council's Water Management Policy.

The certificate shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment.

16. **Contaminated Land Requirements**

Prior to the issue of any Construction Certificate a Contamination Management Plan is to be prepared by an appropriately qualified Environmental Consultant and provided to the satisfaction of the Certifying Authority. The plan shall detail:

- a) How all the requirements and / or recommendations contained within the Contamination Reports titled STAGE 1 PRELIMINARY ENVIRONMENTAL SITE ASSESSMENT, REF: E30969Krpt# prepared by Environmental Investigation Services and dated 16 November 2017 are to be implemented;
- b) A Remedial Action Plan (RAP) prepared by a suitably qualified Environmental Consultant in accordance with State Environmental Planning Policy No. 55 - Remediation of Land, and with any contaminated land planning guidelines under the Contaminated Land Management Act 1997;
- c) Stipulate reporting and processes associated with discovery of any new contamination that is revealed during excavation, demolition or development works. This process shall





include the ability to contact NSW Fire and Rescue for pollution incidents, have on call (24 hours a day), a suitably qualified Environmental Consultant to undertake immediate investigations and provide recommendations for containment and rectification of contaminants or toxins and a process for notification to Warringah Council and the Principal Certifying Authority;

**d)** A requirement to complete ongoing water and soils testing during excavation, demolition and development works as follows:

(a) During construction in order to monitor water and soil quality the following is to be implemented:

- i) Water testing is to be completed in accordance with Section 3 of the NSW RTA's Guideline for Construction Water Quality Monitoring
- ii) Soil Testing in order to detect contaminants is occur weekly with two (2) samples in accordance with the NSW EPA Contaminated Site Sampling Design Guidelines.

(b) The requirements of (i) and (ii) above are to be implemented from the commencement of works as follows:

- i) Fortnightly during excavation works
- ii) Monthly during building works;

**e)** To ensure water quality is maintained runoff must be drained to an adequately banded central collection sump and treated, to meet NSW Department of Environment and Climate Change (formerly Environment Protection Authority) discharge criteria.

**Note E:** Other options for the disposal of excavation pump-out water include disposal to sewer with prior approval from Sydney Water, or off-site disposal by a liquid waste transported for treatment/disposal to an appropriate waste treatment/processing facility;

**f)** All stockpiles of potentially contaminated soil must be stored in a secure area on the site (no greater than 48 hours) so as not to cause pollution or public health risk until disposed of at a waste facility.

All contaminated soil removed from the site must be disposed of at a waste facility that can lawfully receive that waste and must be done in accordance with all relevant Acts, Regulations and Guidelines. Copies of all test results and disposal dockets must be retained for at least 3 years and be made available to authorised Council officers on request.

**Note F:** The following Acts and Guidelines applied at the time of determination:

- i) Protection of the Environment Operations Act 1997; and
- ii) Environment Protection Authority's Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes (1999);

**g)** Hazardous or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of WorkCover NSW and the Environment Protection Authority and the provisions of all relevant Acts, Regulations and Guidelines.

**Note G:** The following standards applied at the time of determination:

- i) Environment Protection Authority's Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes (1999);

**h)** Stipulate protocols for the importation of any landfill material onto the site the protocols shall include:

- o 'Chain of Custody' documentation shall be kept and submitted for the





transport of the validated fill material to and from the subject premises.

- o Requirement that any landfill material being brought to the site shall be free of contaminants or toxins and shall be suitable for the use on the land.
- o Any landfill material being brought to the site shall have a validation report prepared to the satisfaction of the Principal Certifying Authority (prepared in accordance with the Department of Environment & Climate Change's guidelines).

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

Reason: Protection of the environment, SEPP 55 compliance.

17. **Noise from mechanical plant**

Mechanical plant situated on the roof and in the carpark of the premises must be acoustically treated to ensure noise emissions are not audible at the nearest residential premises. Details are to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Council may require the owner or occupier of the premises to engage the services of a suitably qualified professional to undertake an acoustic assessment of the premises in the event concerns regarding the emission of 'offensive noise' are raised and/or justified by Council.

Reason: To protect the acoustic amenity of neighbouring properties.

18. **Pre-Construction Dilapidation Survey**

A pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at <https://www.northernbeaches.nsw.gov.au>

The pre-construction / demolition dilapidation report must be submitted to Council for approval and the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure

19. **Compliance with Standards**

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

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

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

20. **External Finishes to Roof**

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

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the



issue of the Construction Certificate.

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

21. **Sewer / Water Quickcheck**

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

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- o Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- o Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- o Or telephone 13 20 92.

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

22. **Construction Traffic Management Program**

A Construction Management Program shall be submitted to the Council's Transport Network for approval prior to the issue of a Construction Certificate. The program shall detail:

- (a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- (b) The proposed phases of construction works on the site, and the expected duration of each construction phase;
- (c) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- (d) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process.
- (e) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- (f) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- (g) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;





- (h) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent;
- (i) Proposed protection for Council and adjoining properties;
- (j) The location and operation of any on site crane;

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

#### 23. **Bicycle Parking and end of trip facilities**

Under part C3(A) of the Warringah Development Control Plan 2011, the following end of trip facilities must be provided for the retail component including: bathroom/change area(s) containing at least one toilet, wash basin, mirror, clothing hooks, and power points, a minimum of one (1) shower cubicle, private changing area with a bench and minimum of two (2) clothing hooks. A suitably sized clothes locker is also to be provided.

At least two bicycle parking with a high-medium security level is to be provided within the site accessible from Lawrence Street.

This requirement is to be reflected on the Construction Certificate plans and any supporting documentation for the endorsement of the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure bicycle facilities are provided in accordance to Council's WDCP requirements.

#### 24. **Waste and Recycling Requirements**

Details demonstrating compliance with Warringah Development Control Plan – Part C9 Waste Management, including the required Warringah Waste Management Plan, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with Warringah Development Control Plan – Part C9 Waste Management, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.  
(DACWTC01)

### **CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

#### 25. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$10 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Warringah Council, as an interested party and a copy of the Policy must





be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

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

26. **Tree protection**

- (a) Existing trees which must be retained
  - i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
  - ii) Trees located on adjoining land
- (b) Tree protection
  - i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
  - ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.
  - iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
  - iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
  - v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DACLAD01)

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

27. **Property Boundary Levels**

The property boundary levels shall match the existing levels except where modified for the vehicular crossing. The applicant shall design and construct having regard for the existing levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

Reason: To maintain the existing profile of the nature strip/road reserve

28. **Progress Certification (Road & Subdivision)**

Written certification is to be provided by a suitably qualified engineer upon completion and/or as and when requested by the Certifying Authority for the following stages of works.

- (a) Silt and sediment control facilities
- (b) Laying of stormwater pipes and construction of pits
- (c) Sub-grade trimmed and compacted \*\*
- (d) Base-course laid and compacted \*\*
- (e) Kerb and gutter construction
- (f) Pavement
- (g) Landscaping and vegetation
- (h) Clean-up of site, and of adjoining Council roadway and drainage system.



(\*\*To be tested by a recognised N.A.T.A. approved laboratory).

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

Reason: To ensure compliance of civil works with Council's specification for engineering works (see [www.warringah.nsw.gov.au](http://www.warringah.nsw.gov.au)). (DACENE02)

29. **Maintenance of Road Reserve**

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

Reason: Public Safety. (DACENE09)

30. **Traffic Control During Road Works**

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

Reason: Public Safety. (DACENE11)

31. **Waste Management During Development**

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

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

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

32. **Trees Condition**

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

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

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

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



Reason: Protection of Trees. (DACLA03)

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

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Council's Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

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

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

34. **Works Zone**

The applicant shall lodge an application for a work zone for the frontage of the site to Council for consideration and approval. The provision of a work zone will require approval from Northern Beaches Local Traffic Committee. Application forms for work zones are available on Council's website or at the Customer Service section at Council's administration building. Applications shall be lodged at least 4 weeks prior to work commencing.

Reason: To ensure works vehicles do not impact on parking, traffic flows and pedestrian thoroughfares.

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

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared by Civil & Stormwater Service Plans prepared by AJ Whipps Consulting Group dated December 2017.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

36. **Waste/Recycling Requirements (Waste Plan Submitted)**

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

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

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

37. **Authorisation of Legal Documentation Required for On-site Stormwater Detention**

An application for the authorisation of legal documents is to be lodged with Council and payment





of the associated fee. The application is to include the original completed request forms (Department of Lands standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and photographic evidence of the completed system.

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 the on-site stormwater disposal system is maintained to an appropriate operational standard

38. **Registration of Encumbrances for On-site Stormwater Detention**

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

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

Reason: To identify encumbrances on land. (DACENF02)

39. **Reinstatement of Kerb**

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

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

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

40. **Restriction as to User for On-site Stormwater Detention**

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements, (available from Northern Beaches Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

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 modification to the on-site stormwater detention structure is not carried without Council's approval. (DACENF04)

41. **On-Site Stormwater Detention Compliance Certification**

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans.



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 stormwater disposal is constructed to Council's satisfaction. (DACENF10)

42. **Certification of Structures Located Adjacent to Council Pipeline or Council Easement**  
All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management Policy; in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification.  
<https://www.warringah.nsw.gov.au/sites/default/files/documents/policies-register/environment/water-management-policy/2016-011845-water-management-policy-current.pdf>

A statement of compliance is to be prepared by a suitably qualified Civil Engineer and submitted to the Certifying Authority for approval prior to the issue of the Occupation Certificate.

Reason: Protection of Council's Infrastructure (DACENF11)

43. **Positive Covenant for On-site Stormwater Detention**  
A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Warringah Council's delegate prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

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

Reason: To ensure ongoing maintenance of the on-site stormwater detention system. (DACENF12)

44. **Creation of Positive Covenant and Restriction as a User**  
Where any conditions of this Consent require the creation of a positive covenant and/or restriction as a user, the original completed request forms, (Department of Lands standard forms 13PC and/or 13RPA), shall be submitted to Northern Beaches Council for authorisation.

A certified copy of the documents shall be provided to Northern Beaches Council after final approval and registration has been affected by the "Department of Lands".

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Interim / Final Occupation Certificate.

Reason: To identify encumbrances on land. (DACENF14)

45. **Certification for the Installation of Stormwater Quality System**  
A certificate from a Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NER) shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate, stating that the stormwater quality management system has been installed in accordance with the (Insert Plans) and Council's Water Management Policy.





The certificate shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment

46. **Positive Covenant for Stormwater Quality System**

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

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

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

Reason: To ensure ongoing maintenance of the on-site stormwater detention system

47. **Registration of Encumbrances for Stormwater Quality System**

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for stormwater quality system as to user is to be submitted.

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

Reason: To identify encumbrances on land

48. **Restriction as to User for Stormwater Quality System**

A restriction as to user shall be created on the title over the stormwater quality system, restricting any alteration to system. The terms of such restriction are to be prepared to Council's standard requirements, (available from Northern Beaches Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

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 modification to the on-site stormwater detention structure is not carried without Council's approval

49. **Required Planting**

i) Trees, shrubs and ground covers shall be planted in accordance with the Landscape drawings, Dwg Nos. 2417 LP-10, -02 and -03 Rev B dated 05/12/2017 prepared by John Lock and Associates Landscape Architecture:





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

Reason: To maintain environmental amenity. (DACLAF01)

50. **Post-Construction Dilapidation Survey**

A post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works.

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

Reason: Protection of Council's Infrastructure

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

A suitably qualified Civil Engineer shall certify that the completed works have been constructed in accordance with this consent and the approved Construction Certificate plans. Works as Executed data certified by a registered surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Stormwater Assets' shall be submitted to the Council for approval prior to the issue of the Occupation Certificate.

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

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

52. **Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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 bushland management. (DACPLF01)

53. **Garbage and Recycling Facilities**

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

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

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

54. **Waste Management Confirmation**



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

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

55. **Allocation of parking spaces**

All carparking spaces are to be assigned to individual units, with stacked parking spaces to be allocated to the same residential or retail unit. All residential units and retail units must be assigned a minimum of one parking space. 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 parking availability for residents.

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

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

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

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

57. **Waste/Recycling Compliance Documentation**

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

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

58. **Positive Covenant for Waste Services**

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

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

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

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

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance



with Council's Fees and Charges.

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

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

64. **Maintenance of Stormwater Quality System**

The stormwater quality system must be maintained at all times in accordance with the Stormwater Quality Operation and Maintenance Plan, manufacturers specifications and as necessary to achieve the required stormwater quality targets for the development.

Reason: Protection of the receiving environment

65. **Requirement to meet electromagnetic long-term studies**

Any new information or long-term studies undertaken that has the potential to alter previous conclusions about electromagnetic fields exposure shall be implemented to ensure the risk to public health is minimise.

Reason: To maintain public health risk (DACHPGOG5)

66. **Correspondence with substation services provider**

Correspondence with the services provided (at the time of this report being Ausgrid) shall be regularly maintained (i.e every 6 months/annually) to detail if any changes have been made to the substation that may have potential to alter previous conclusions about electromagnetic fields exposure. Appropriate measure must be implemented if required.

Reason: To maintain public health risk (DACHPGOG5)

67. **Landscape maintenance**

- i) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.
- ii) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: To maintain local environmental amenity

68. **Commercial Waste and Recycling Storage**

Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins as shown on the approved plans.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed. (DACPLG19)

69. **Pedestrian Safety Measures at Driveway**

Safety measures at the vehicle access driveway and property boundary is to be installed prior to the issue of occupancy certificate, which include the following:

- a. STOP sign for egressing drivers
- b. Speed hump for egressing drivers

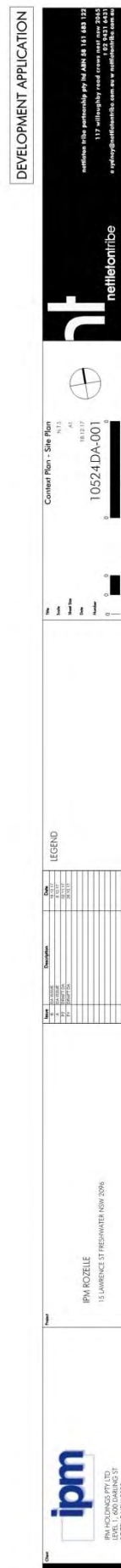


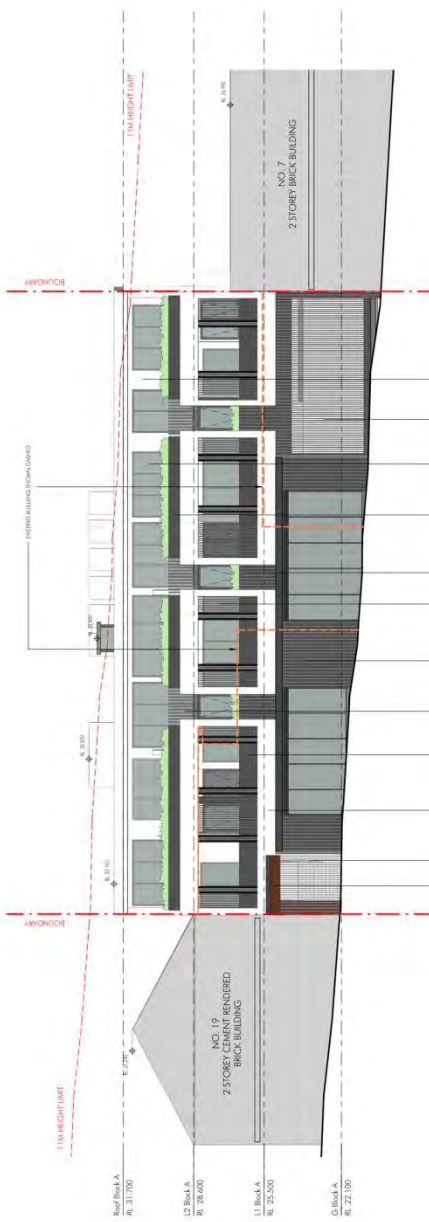


- c. Contrasting driveway paving
- d. Tactile paving along each side of the driveway
- e. Under awning light indicator activated by egress cars

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

Reason: To ensure that pedestrian safety is maintained.

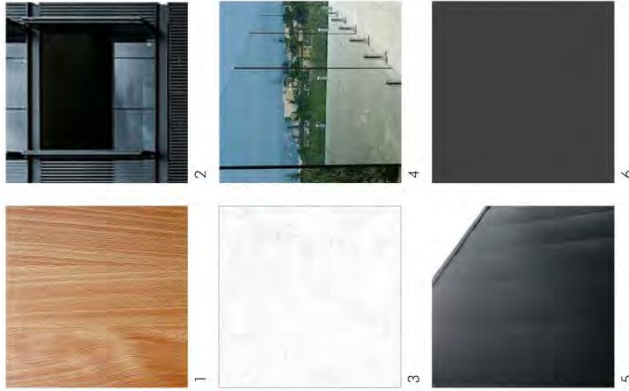




**1 South Elevation**



**2 North Elevation**



- EXTERNAL FINISHES LEGEND**
- 1. TIMBER CLADDING
  - 2. ALUMINUM SCREENS - CHARCOAL FINISH
  - 3. WHITE CEMENT PRECAST
  - 4. CLEAR GLASS & BALUSTRADES
  - 5. CHARCOAL PAINTED PRECAST
  - 6. CHARCOAL CLADDING

**DEVELOPMENT APPLICATION**



**North & South Elevations**  
1:100  
10524-DA-201  
18.03.17  
10524-DA-201  
18.03.17  
10524-DA-201  
18.03.17

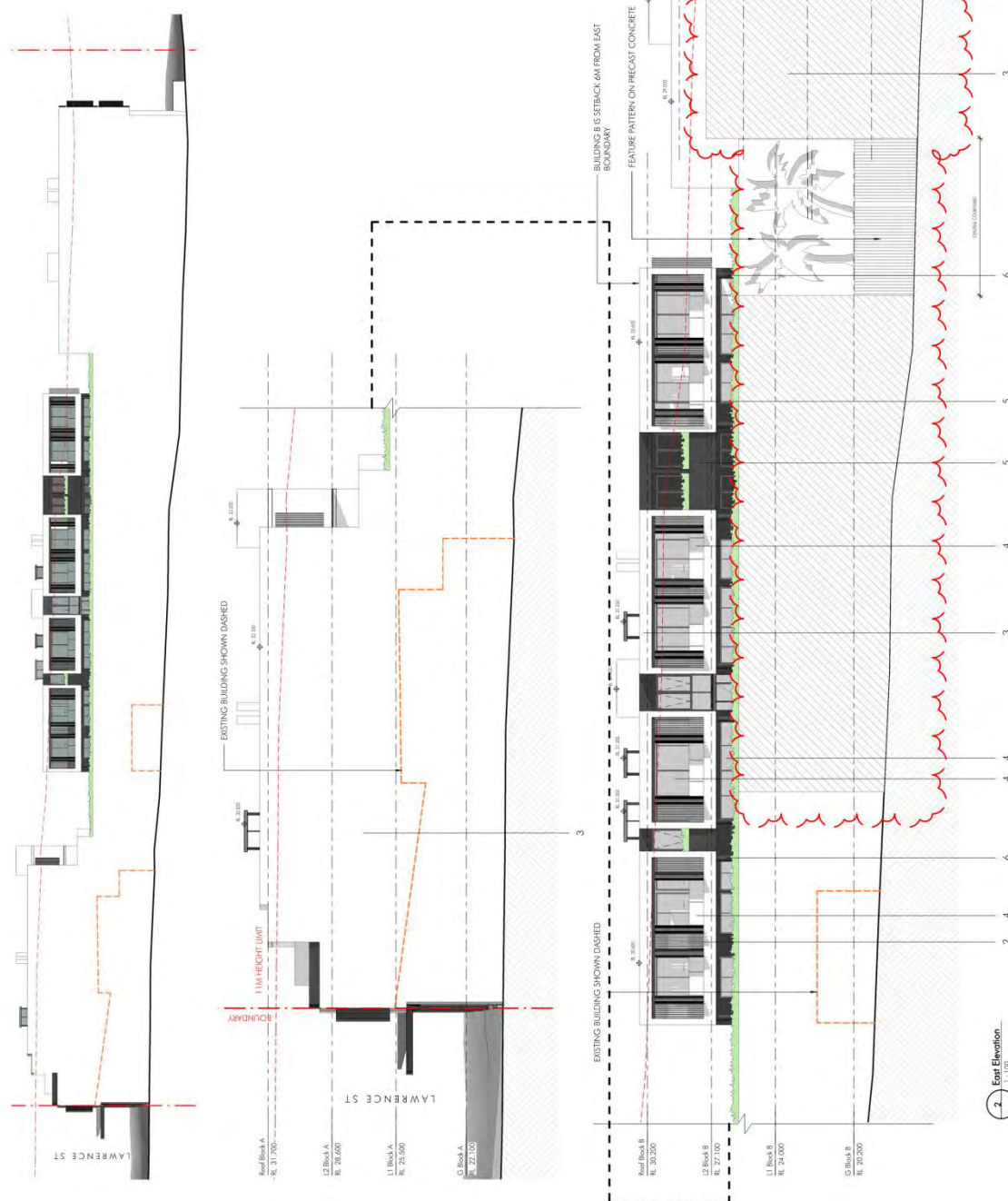
**LEGEND**  
FISHING BUILDING SHOWN SHAPED

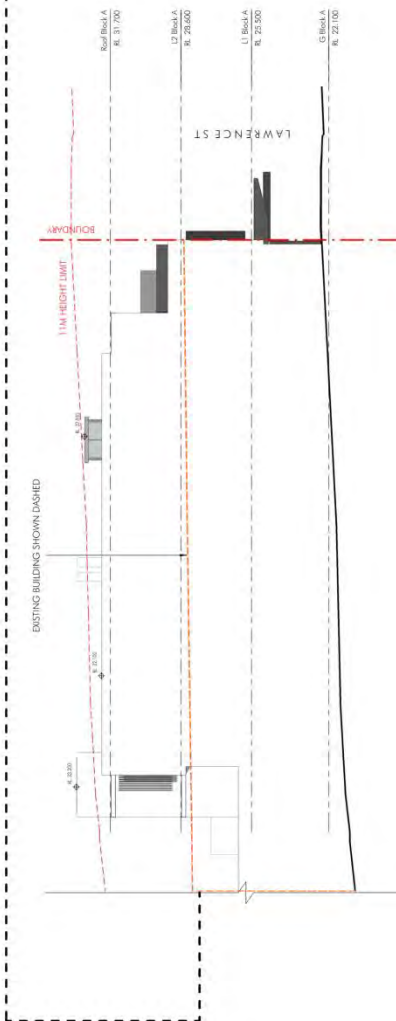
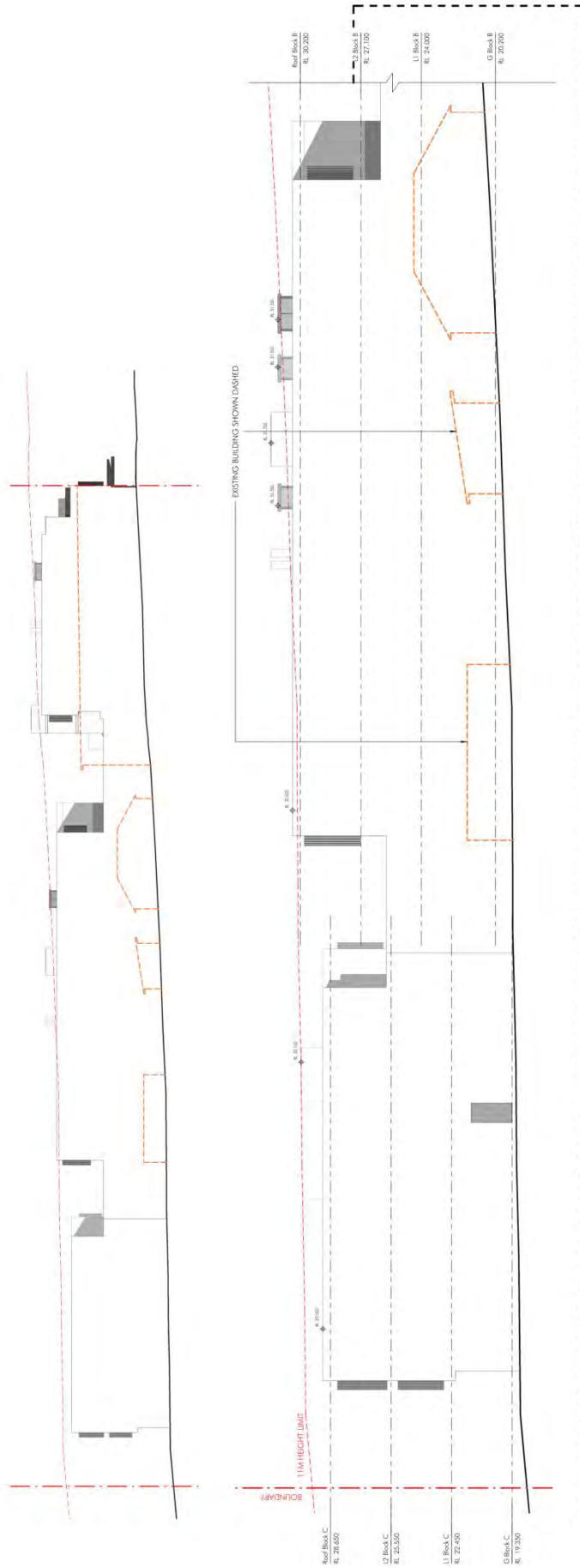
Area	Description	Area	Description
1	10524-DA-201	1	10524-DA-201
2	10524-DA-201	2	10524-DA-201
3	10524-DA-201	3	10524-DA-201
4	10524-DA-201	4	10524-DA-201
5	10524-DA-201	5	10524-DA-201
6	10524-DA-201	6	10524-DA-201

**IPM ROZELLE**  
15 LAWRENCE ST PEGANWATER NSW 2756

**ipm**  
IPM HOLDINGS PTY LTD  
ROZELLE NSW 2029







- EXTERNAL FINISHES LEGEND**
1. TIMBER CLADDING
  2. ALUMINIUM SCREENS - CHARCOAL FINISH
  3. ALUMINIUM SCREENS - WHITE FINISH
  4. CLEAR GLASS & BALUSTRADES
  5. BLACK STEEL
  6. CHARCOAL PAINTED PRECAST

3 West Elevation - Dependent 1  
1:100

DEVELOPMENT APPLICATION

**ipm**  
IPM HOLDINGS PTY LTD  
ROZELLE NSW 2059

**IPM ROZELLE**  
15 LAWRENCE ST ROZELLE NSW 2059

**LEGEND**  
EXISTING BUILDING SHOWN DASHED  
1.1M HEIGHT LIMIT

**West Elevation**  
1:100  
10524-DA-203  
18.07.17  
117 willoughby road sydney nsw 2050  
a.pryor@natteliortbe.com.au w.natteliortbe.com.au

## 5.0 PLANNING PROPOSALS

<b>ITEM 5.1</b>	<b>PLANNING PROPOSAL - RESPONSE TO LOW RISE MEDIUM DENSITY CODE</b>
<b>REPORTING OFFICER</b>	<b>PAUL CHRISTMAS</b>
<b>TRIM FILE REF</b>	<b>2018/354755</b>
<b>ATTACHMENTS</b>	<b>1 <a href="#">↓</a> Department of Planning &amp; Environment letter</b> <b>2 <a href="#">↓</a> Council's 2016 Submission</b> <b>3 <a href="#">↓</a> Table of current and proposed planning controls</b> <b>4 <a href="#">↓</a> Draft Planning Proposal - Response to Low Rise Medium Density Code</b>

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### EXECUTIVE SUMMARY

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#### PURPOSE

To seek Council's approval to submit a Planning Proposal to the Department of Planning and Environment to enable deferral from the Low Rise Medium Density Housing Code (the Code).

#### SUMMARY

The Low Rise Medium Density Housing Code (the Code), made under State Environmental Planning Policy (Exempt and Complying Development), permits attached and detached dual occupancies, multi-dwelling housing, and manor houses, and the subdivision of such developments, as complying development where those uses are currently permitted under Council's Local Environmental Plans (LEPs). The Code is set to commence on 6 July 2018.

The Code may result in higher density development than currently permissible under Council's codes, particularly in low density R2 zones.

The Minister for Planning has recently announced that he will consider deferring the commencement of the Code in some Council areas for 12 months subject to the submission of a Planning Proposal by those Councils to "rectify local planning controls to meet the strategic intent of each Council area" in the Department of Planning & Environment letter (Attachment 1). The Planning Proposal must be submitted to the Department of Planning by 27 June 2018.

A Planning Proposal has been prepared which prohibits:

- manor houses and multi-dwelling housing (including terraces) in zone R2 Low Density Residential zone under the Manly LEP 2011; and
- dual occupancy in zone R2 Low Density Residential zone under the Manly LEP 2011 and Pittwater LEP 2014.
- multi-dwelling housing and dual occupancies in the R3 Zone in the Warriewood Valley under Pittwater LEP 2014

The Planning Proposal will not resolve all issues with the Code; amendments to the Code itself will still be required. It is therefore anticipated that the submission of this Planning Proposal will be the starting point for a discussion with the Department of Planning about how best to implement the changes during the period of deferral from the Code (the next 12 months).



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**RECOMMENDATION OF PRINCIPAL PLANNER**

That

- A. Council submit a Planning Proposal to the Department of Planning and Environment to ensure local planning controls continue to both meet the strategic intent of Council's low density residential zones and to defer the commencement of the Low Rise Medium Density Code.
  - B. Council write to the Minister for Planning to seek exemption from the Low Rise Medium Density Housing Code
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## REPORT

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### BACKGROUND

In late 2015, the Department of Planning and Environment exhibited a Discussion Paper: *Options for low rise medium density housing as complying development*. The Discussion Paper proposed standards for the development of dual occupancies, multi-dwelling houses and manor homes, as well as subdivision, to be undertaken as complying development so as to “assist in the delivery of more housing, providing greater housing choice and better design outcomes for medium density development across the State”.

The former Councils of Manly, Warringah and Pittwater provided submissions to the Discussion Paper, specifically objecting to the proposal to allow dual occupancies; multi-dwelling houses, manor homes and subdivision within all low density residential neighbourhoods.

In late 2016 the draft Low Rise Medium Density Code was exhibited. Council considered the exhibited draft Code at its meeting of the 13 December 2016 and resolved to make submissions highlighting major concerns with the Code including excessive densities and speculative development in low density areas, particularly in areas under the Manly and Pittwater LEPs as detailed in Council's 2016 submission (Attachment 2).

The Code, made under State Environmental Planning Policy (Exempt and Complying Development Codes) 2007 (the 'Codes SEPP') is scheduled to commence on 6 July 2018. The Code does not address concerns previously raised by Council.

On 22 May the Department of Planning and Environment advised that the Minister would consider deferring the commencement of the Code to allow Councils to seek certain changes to its LEPs ahead of the Code such that the strategic intent for each Council area is still met.

In its letter of 22 May 2018, the Department also advised that:

- Council will need to lodge a planning proposal with the Department of Planning and Environment by 5.00 pm 27 June 2018.
- The Planning Proposal must address, or identify that it will address the following:
  - the area of land zoned R2 Low Density Residential, R1 General Residential and R3 Medium Density Residential (Table 1);
  - the number of lots eligible for manor house or multi-dwelling housing development as complying development under the code in the R2, R1 or R3 zone (Table 4);
  - the number of multi-dwelling housing developments approved by the council in the R2, R1 and R3 zone in the past 5 years (Table 5); and
  - whether the proposal is supported by a housing strategy that has been developed in consultation with the community.
- The information required to support the proposal is necessary to ensure that a full understanding of the outcomes of changing the planning controls in the R2 zone has on the future provisions of housing diversity in the local government area.
- The proposal will need to be finalised by 1 July 2019.

While the above instructions for the Planning Proposal limit considerations to residential flat buildings (including manor homes) and multi-dwelling housing (including terraces) in the R2 Low Density Residential zone, Council's 2016 submission also addressed issues with planning controls applicable to Dual Occupancy as Complying Development which should also be addressed by Council's Planning Proposal.

Given the short amount of time given to prepare the Planning Proposal it is anticipated that further strategic analysis will be required to be undertaken by Council for the Department in addition to Council's initial Planning Proposal submission.

In relation to the Department of Planning & Environment questions above, the following Figures 1 to 5 indicate some preliminary data in relation to low rise medium density eligibility and approvals across Northern Beaches LEPs.

**Table 1 – Areas of land zoned residential (GIS Mapping based)**

	Manly LEP	Warringah LEP	Pittwater LEP	TOTAL *
<b>R2 Low Density Residential</b>	2,745,805.93m <sup>2</sup>	24,656,557.93m <sup>2</sup>	5,307,026.15m <sup>2</sup>	32,709,390.01 m <sup>2</sup>
<b>R1 General Residential</b>	2,125,466.45m <sup>2</sup>	No R1 zone in this LEP	No R1 zone in this LEP	2,125,466.45 m <sup>2</sup>
<b>R3 Medium Density Residential</b>	142,496.32 m <sup>2</sup>	1,651,499.80 m <sup>2</sup>	1,556,407.75m <sup>2</sup>	3,350,403.87m <sup>2</sup>

**Table 2 – Eligible number of lots for Dual Occupancy**

	Manly LEP	Warringah LEP	Pittwater LEP	TOTAL *
<b>R2 Low Density Residential</b>	3788 lots	0 (no dual occupancy permitted in this zone)	2057 lots	5845 lots
<b>R1 General Residential</b>	2475 lots	N/A (no R1 zone in this LEP)	N/A (no R1 zone in this LEP)	2475 lots
<b>R3 Medium Density Residential</b>	104 lots	1311 lots	266 lots	1681 lots

**Table 3 – Number of approvals for dual occupancy in the past 5 years**

	Manly LEP	Warringah LEP	Pittwater LEP	TOTAL *
<b>R2 Low Density Residential</b>	1 approval	No dual occupancy permitted in this zone.	15 approvals	16 approvals
<b>R1 General Residential</b>	2 approvals	No R1 zone in this LEP	No R1 zone in this LEP	2 approvals
<b>R3 Medium Density Residential</b>	0 approvals	0 approvals	0 approvals	0 approvals

\* Note: Total figures exclude land under Warringah LEP 2000 – 'Deferred Lands' which does not contain standard (LEP) instrument zoning and incorporation of data under this LEP is subject to further research under the Planning Proposal

\*\* Note: Total 'eligible' lots includes environmental sensitive lands yet to be excluded subject to further analysis.



**Table 4 – Number of lots eligible \*\* for low rise medium density housing**

	Manly LEP	Warringah LEP	Pittwater LEP	TOTAL *
<b>R2 Low Density Residential</b>	2301 lots	0 (not permitted with consent in this zone)	NA	2301 lots
<b>R1 General Residential</b>	860 lots	N/A (no R1 zone in this LEP)	N/A (no R1 zone in this LEP)	860 lots
<b>R3 Medium Density Residential</b>	63 lots	1070 lots	419 lots	482 lots

**Table 5 – Number of approvals for multi dwelling housing and manor homes in the past 5 years**

	Manly LEP	Warringah LEP	Pittwater LEP	TOTAL *
<b>R2 Low Density Residential</b>	0 approvals	0 approvals	0 approvals	0 approvals
<b>R1 General Residential</b>	2 approvals	No R1 zone in this LEP	No R1 zone in this LEP	2 approvals
<b>R3 Medium Density Residential</b>	4 approvals	15 approvals	3 approvals	22 approvals

\* Note: Total figures exclude land under Warringah LEP 2000 – ‘Deferred Lands’ which does not contain standard (LEP) instrument zoning and incorporation of data under this LEP is subject to further research under the Planning Proposal

\*\* Note: Total ‘eligible’ lots includes environmental sensitive lands yet to be excluded subject to further analysis.

As can be seen from the above, the number of approvals for low rise medium density development over the past 5 years is low compared to the estimated number of lots which are eligible for Comply Development under the new Code. However, as outlined below, the code will introduce new controls that are more relaxed than the current Council controls. Accordingly, the uptake of these development types will be expected to increase under the Code.

## IMPACT OF THE CODE

The issues associated with the Code may be summarised as follows:

- It permits the subdivision of dual occupancy development into smaller allotments than currently permissible under Pittwater and Manly LEPs in the R2 zone
- It permits dual occupancy development with lesser setback and car parking requirements than currently permissible under Pittwater and Manly Development Control Plans (DCPs) in the R2 zone
- It permits the subdivision of 'manor houses' and 'multi-dwelling housing' into smaller allotments than currently permissible under the Manly LEP in the R2 zone
- It permits 'manor houses' and 'multi-dwelling housing' at a higher density than currently permissible under the Manly DCP in the R2 zone
- It permits manor houses, multi-dwelling housing and dual occupancies in the R3 medium density residential zone in Warriewood Valley with significantly less landscaped area than currently required under Pittwater DCP.

A more detailed assessment of the current and proposed controls is provided in the table of current and proposed planning controls (Attachment 3).

#### Manor Houses

Manor Houses are being introduced under the Standard Instrument (LEP) Order from 6 July 2018 and will be defined in the LEP Dictionary as follows:

*manor house* means a building containing 3 or 4 dwellings, where:

- (a) each dwelling is attached to another dwelling by a common wall or floor, and
- (b) at least 1 dwelling is partially or wholly located above another dwelling, and
- (c) the building contains no more than 2 storeys (excluding any basement).

Note. Manor houses are a type of residential flat building—see the definition of that term in this Dictionary.

The Code will amend Manly LEP 2013 by inserting 'Manor Houses' as a permitted use in Zone R2 Low Density Residential. While certain other low rise medium density uses are already permitted (see discussion on Multi dwelling housing and Dual Occupancies below), the introduction of Manor Houses as complying development under the Code is considered contrary to LEP Zone objectives to provide for the housing needs of the community within a low density residential environment.

The Code will permit Manor Houses as Complying Development on sites over 600sqm in area i.e. 200sqm per dwelling. The Manly LEP and DCP require minimum site area of between 500sqm and 1150sqm per dwelling (MDCP2013, Schedule, Map A) for residential development in the R2 Low Density zone. The likely density yield under the Code will be in the vicinity of 6 times greater than permitted in the Manly LEP and DCP.

In relation to other aspects of built form such as height, floor area and setback there are also disparities between the development outcomes currently achievable in a DA under the LEP and those to be permitted under the Code. Accordingly the Planning Proposal supports omitting Manor Houses as a permissible use with Consent in the R2 zone under the Manly LEP so as to retain the zones' strategic intent.

#### Multi Dwelling Housing

The definition of Multi dwelling housing is being amended under the Standard Instrument (LEP) Order from 6 July 2018 to include Multi dwelling housing (terraces) in the LEP Dictionary as follows:

*multi dwelling housing* means 3 or more dwellings (whether attached or detached) on one lot of land where:

- (a) each dwelling has access at ground level, and
- (b) no part of a dwelling is above any part of any other dwelling, and includes multi dwelling housing (terraces).

Note. Multi dwelling housing is a type of residential accommodation—see the definition of that term in this Dictionary.

multi dwelling housing (terraces) means multi dwelling housing where all dwellings are attached and face, and are generally aligned along, 1 or more public roads.

Note. Multi dwelling housing (terraces) are a type of multi dwelling housing—see the definition of that term in this Dictionary.

While multi dwelling housing is currently permitted in the Manly LEP R2 Low Density zone, Council's residential density provisions (MDCP2013, Schedule, Map A) limit the number of dwellings on any site in a similar manner as Manor Houses discussed above (requiring between 500sqm and 1150sqm of site area per dwelling) e.g. A development comprising 8 dwellings requires a site of 4000sqm (500sqm x 8) in the DCP. However, the Code provides examples of multi dwelling housing (terraces) on a standard lot comprising 8 dwellings on a minimum sized lot of 600sqm.

The Code does not recognise the existing minimum lot area requirements that are contained in the Manly DCP 2013. In the absence of a minimum lot area, the Code provides for multi dwelling housing (terraces) as Complying Development on sites of 600sqm in area and 18m site width at the building line.

In relation to other aspects of built form such as height, floor area and setback there are also disparities between the development outcomes currently achievable in a Development Application under the LEP and those to be permitted under the Code. Accordingly the Planning Proposal supports omitting multi dwelling housing as a permissible use with Consent in the R2 zone under the Manly LEP so as to retain the zones' strategic intent.

### Dual Occupancies

Dual Occupancies are a permitted land use in Zone R2 Low Density in both the Manly and Pittwater LEPs. Dual Occupancies are a prohibited use in Warringah LEP's R2 zone.

Under the Pittwater LEP (clause 4.1B) Dual Occupancy requires a site area of at least 800sqm to construct a dual occupancy development. Whilst this provision would continue to apply, the Code would permit the subdivision of dual occupancies into lots of between 330-420 sqm (and possibly lower) in the R2 zone, depending on location. This is significantly smaller than the Pittwater LEP which permits subdivision into lots of between 550-700 sqm in the R2 zone, depending on location.

Under the Manly LEP there is no minimum allotment size specified for the construction of a dual occupancy. Residential density controls are instead specified in the Manly DCP. Between 1000 sqm and 2,300 sqm of land is required for dual occupancy development in the R2 zone, depending on location. The Code will override the DCP requirements, permitting dual occupancies on lots of 400 sqm in all areas zoned R2. The Code will also permit the subdivision of dual occupancies into lots of 300-690 sqm (and possibly lower) in the R2 zone, depending on location. This is significantly smaller than the Manly LEP, which permits subdivision into lots of between 500-1150 sqm in the R2 zone, depending on area.

Further analysis may be required in reviewing the impact of this aspect of the Planning Proposal on dwelling supply given that this form of low rise medium density is more common. Some other



matters which could be further investigated include options to only permit dual occupancy as Complying Development that cannot be subdivided and/or as a Complying Development type in which one dwelling is not located above another dwelling.

Accordingly the Planning Proposal supports omitting dual occupancies as a permissible use with Consent in the R2 zone under the Manly and Pittwater LEPs so as to retain the zones' strategic intent.

### Warriewood Valley

Warriewood Valley has strict controls in relation to water management as it is highly flood prone and adjacent to the Endangered Environmental Community of the Warriewood Wetlands. The 'built upon' area identified as part of the flood modelling undertaken by Council for water cycle management, stipulates 50% site coverage/landscaped area for a Sector. Water management facilities have been designed and constructed in accordance with this requirement. However, the Code allows for no landscaped area for some dual occupancies, based on lot size. This may result in additional run-off and impacts on water quality as the water management facilities were not designed to deal with the additional flows.

Accordingly, the Planning Proposal supports omitting manor houses, multi-dwelling housing and dual occupancies as a permissible use with Consent in the R3 zone in the Warriewood Valley under the Pittwater LEP 2014.

## **PLANNING PROPOSAL**

The intended outcome of the Planning Proposal is to defer the application of the Low Rise Medium Density Housing Code to R2 Low Density Residential zones in all Northern Beaches Council LEPs, retaining the zones' strategic intent.

In summary, the Planning Proposal prohibits:

- manor houses and multi-dwelling housing (including terraces) in zone R2 Low Density Residential zone under the Manly LEP 2011; and
- dual occupancy in zone R2 Low Density Residential zone under the Manly LEP 2011 and Pittwater LEP 2014.
- manor houses, multi-dwelling housing and dual occupancies in the R3 Zone in the Warriewood Valley under Pittwater LEP 2014

A full copy of the Draft Planning Proposal to Low Rise Medium Density Housing Code (Attachment 4).

## **CONCLUSION**

The Planning Proposal is prepared in accordance with the Department's Guide to preparing Planning Proposals as well as specific requirements specified in its letter to Council dated 22 May 2018 as outlined in this report. In particular, detailed analysis of land supply in Northern Beaches residential areas will likely be required ahead of the preparation of future more comprehensive Housing Strategies including matters such as the number of lots eligible for low rise medium density housing and the number of approval for such housing across the residential zones.

The Low Rise Medium Density Housing Code is currently drafted to broadly apply in Councils' Residential zones wherever low rise medium density housing is currently permitted with development consent. As such, the only way to limit the application of the Codes is to prohibit these housing types in the LEP. Councils' Planning Proposal seeks to limit the carrying out of Complying Development under the Code through proposed amendments to the Land Use Table in

the R2 zone in the Manly and Pittwater LEPs to meet the zones' strategic intent and the R3 zone in the Warriewood Valley under Pittwater LEP 2013.

The Minister for Planning has advised that he will consider deferral of the new Code and it is anticipated that the submission of the Planning Proposal will meet requirements for Northern Beaches Council to be deferred from the new Code. This report also concludes that Council's strategic intent with particular regard to low density residential areas may otherwise be better served by amendments to the Codes SEPP which exempt Council from the low rise medium density housing Codes in its low density zones but still retain current provisions which permit certain types of low rise medium density as DAs subject to stringent LEP and DCP controls.

## **CONSULTATION**

The Department of Planning and Environment exhibited the draft Low Rise Medium Density Housing Code in 2016. Following Council's submission in response to the exhibition, the next direct consultation in this matter was recently received by the Department regarding the Minister of Planning's announcement on the SEPP and considerations that it may be deferred in certain circumstances. Further consultation will be required to progress the Planning Proposal as detailed in the report with both the Community and the Department. Statutory public participation processes will occur following a Gateway approval for the Planning Proposal from the Department of Planning.

## **TIMING**

The Planning Proposal is required to be submitted to the Department on 27 June 2018.

## **FINANCIAL CONSIDERATIONS**

There are no substantive financial considerations, with the preparation of the Planning Proposal being an operational matter.

## **SOCIAL CONSIDERATIONS**

There are no social considerations.

## **ENVIRONMENTAL CONSIDERATIONS**

There are substantial environmental considerations associated with the preparation of the Planning Proposal. In particular, the Low Rise Medium Density Housing Code is considered likely to erode the character of established low density neighbourhoods and cause objectionable amenity impacts.

## **GOVERNANCE AND RISK CONSIDERATIONS**

Governance and risk considerations are standard procedural considerations in relation to actions arising from the recommendation of this report.



Planning &  
Environment

IRF18/2678

Mr Ben Taylor  
Acting CEO  
Northern Beaches Council  
PO Box 1336  
DEE WHY NSW 2099

Dear Mr Taylor

I am writing to you regarding the Minister of Planning's recent announcement on the Low Rise Medium Density Code and medium density housing in the R2 Low Density Residential zone.

The Minister has advised that he would consider deferring the commencement of the code to allow councils in the Greater Sydney region to rectify local planning controls to meet the strategic intent of each council area. This deferral only applies to residential flat buildings (including manor houses) and multi-dwelling housing (including terraces) in the R2 zone where the current planning controls or the new code permit them. The provisions of the code will continue to apply to dual occupancy.

To seek this deferral from the code Council will need to lodge a planning proposal with the Department of Planning and Environment by 5.00 pm 27 June 2018. The planning proposal will need to address, or identify that it will address, the following:

- the area of land zoned R2 Low Density Residential, R1 General Residential and R3 Medium Density Residential;
- the number of lots eligible for manor house or multi-dwelling housing development as complying development under the code in the R2, R1 and R3 zone;
- the number of multi-dwelling housing developments approved by the council in the R2, R1 and R3 zone in the past 5 years; and
- whether the proposal is supported by a housing strategy that has been developed in consultation with the community.

The information required to support the proposal is necessary to ensure that a full understanding of the outcomes of changing the planning controls in the R2 zone has on the future provision of housing diversity in the local government area. The proposal will need to be finalised by 1 July 2019.

If your staff have further questions please do not hesitate to Amanda Harvey, Director Sydney Region East on 8275 1128.

Yours sincerely

Marcus Ray  
Deputy Secretary  
Planning Services

22/05/2018

320 Pitt Street Sydney NSW 2000 | GPO Box 39 Sydney NSW 2001 | [planning.nsw.gov.au](http://planning.nsw.gov.au)



Attachment one

NORTHERN BEACHES  
COUNCIL

**Submission in response to the draft Medium Density Design Guide  
and an Explanation of Intended Effect for a Medium Density  
Housing Code**

December 2016

## Executive Summary

This submission is provided on behalf of the Northern Beaches Council in response to the draft Medium Density Design Guide (MDDG) and Explanation of Intended Effect (EIE) for a Medium Density Housing Code (draft Code). Comments are provided with respect to local planning controls for the three former Local Government Areas (LGAs) of Manly, Warringah and Pittwater, including: the Manly Local Environmental Plan 2013 (MLEP 2013) and Manly Development Control Plan 2013 (MDCP 2013); Warringah Local Environmental Plan 2011 (WLEP 2011), Warringah Local Environmental Plan 2000 (WLEP 2000) and Warringah Development Control Plan 2011 (WDCP 2011); and, the Pittwater Local Environmental Plan 2014 (PLEP 2014) and Pittwater 21 Development Control Plan (PDCP).

**Proposed Development Controls:** The principal controls in the draft Code are significantly less stringent than the local planning provisions of the former LGAs with respect to parking, landscape areas, setbacks, and private open space. Greater floor space ratios would be permitted compared with the MLEP 2013 and PLEP 2014, and increased building heights compared with the MDCP 2013. Thus implementation of the draft Code would result in an increased pressure on street parking, stormwater infrastructure, and an increase in building bulk and scale when compared with two storey developments requiring a development application under the local planning provisions. Council is therefore not satisfied the draft Code establishes a sufficiently strict set of controls to offset significant additional development scale/potential and likely resulting adverse impacts. It is therefore recommended to allow Council to set its own principal standards for complying development to cater to local conditions. This would ensure future medium density developments are in keeping with the character of established neighbourhoods.

**Residential Densities:** The implementation of the draft Code will result in ad-hoc, unplanned development that may affect Council's ability to meet current and future housing targets and their ability to deliver the required level of infrastructure. Of particular concern is the likely increase in density that would result in the former Manly and Pittwater LGAs, which permit dual occupancies within low density residential zones, subject to strict local density requirements. This increased density will result in significant adverse outcomes for our communities, particularly in terms of residential amenity and streetscape/ neighbourhood character. A decrease in dwelling yields may also result in some medium density areas (e.g under the WLEP 2011 and in Warriewood Valley). It is therefore vital that Section 94 plans can be reviewed prior to the implementation of the Code, and that Warriewood Valley and the Ingleside Land Release area are excluded. Further clarification is also sought from the Department as to how local density provisions will be taken into account.

**Private Certification:** The proposed expansion of complying development is not supported until issues with the transparency and accountability of the existing private building certification system are addressed. It is also not clear whether issues such as traffic impacts and stormwater design are proposed for private certification. An appropriate system of monitoring is essential to support the certification system, especially if the proposed design verification process is to proceed.

**Other Issues:** The attached Submission raises a number of other issues including: potential impacts on European and Aboriginal Heritage, absence of requirements for accessible housing, and technical matters such as stormwater and water management, subdivision, excavation, bushland and waste management. Recommendations are made to address Council's concerns.

In summary, the Northern Beaches Council has a number of concerns with the proposed draft Code in its current form, and requests that its commencement be delayed until these issues are resolved.

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## Part A – General Comments

### 1. Permissibility

It is our understanding that the draft Code will permit the the development of dual occupancies (attached and detached), multi-dwelling housing, and manor homes (Proposed Medium Density Development) as complying development only where it is first permitted by Council within Zones R1, R2, R3 and RU5<sup>1</sup>. Council supports this approach, as well as the proposal to restrict manor houses to zones permitting multi-dwelling housing and residential flat buildings<sup>2</sup>.

Council submits that the application of the draft Code in any other zones or lands would result in inappropriate and unsuitable development, particularly in relation to the Northern Beaches' Rural and Environmental zones<sup>3</sup>. It is therefore important that these zones are excluded from any future amendments to the draft Code.

For the Northern Beaches Council area, the draft Code would apply to zones R1 General Residential (R1), R2 Low Density Residential (R2) and R3 Medium Density Residential (R3). There are no RU5 zones in the Northern Beaches Council area. The permissibility of Proposed Medium Density Development in relevant Local Environmental Plans is shown in Table 1 and Figure 1, as well as the permissibility of Residential Flat Buildings to demonstrate the development potential of these areas.

For the Northern Beaches Council area, the draft Code would apply to all residential zones in the MLEP 2013 (R1, R2 and R3) and within zones R2 and R3 in the PLEP 2014. Within the former Warringah LGA, the draft Code would apply only in the R3 zone under WLEP 2011<sup>4</sup>.

**Table 1 – Permissibility of Proposed Medium Density Development across the Northern Beaches Council Area\*.**

LEP	R1	R2	R3
MLEP 2013	Dual occupancies Multi dwelling housing Residential Flat Buildings Manor homes	Dual occupancies Multi dwelling housing Manor homes	Dual occupancies Multi dwelling housing Residential Flat Buildings Manor homes
WLEP 2011	No R1 Zone	None of the Proposed Medium Density Development is permissible within R2	Dual occupancies Multi dwelling housing Residential Flat Buildings Manor homes
PLEP 2014	No R1 Zone	Dual occupancies	Dual occupancies Multi dwelling housing Residential Flat Buildings Manor homes

\*Although 'Manor homes' are not currently permissible in the PLEP 2014, WLEP 2011 and MLEP 2013, the draft Code proposes to permit these developments in zones permitting 'multi-dwelling houses' and 'residential flat buildings'.

<sup>1</sup> Statement of Intended Effect, pg 16

<sup>2</sup> Statement of Intended Effect, pg 37, note 10

<sup>3</sup> Presently, attached dual occupancies are permitted within Pittwater Local Environmental Plan 2014 (PLEP 2014) R5 Large Lot Residential and RU2 Rural Landscape zones, and both attached dual occupancies and multi-dwelling housing are permitted in the Manly Local Environmental Plan 2013 (MLEP 2013) E4 Environmental Living zone

<sup>4</sup> Land to which WLEP 2000 currently applies is taken to be in Zone E3 Environmental Management under the Codes SEPP and is therefore excluded from the current proposals.

**Recommendation 1 - That the Department confirms the draft Code will permit the the development of dual occupancies (attached and detached), multi-dwelling housing, and manor homes as complying development only where it is first permitted by Council within Zones R1, R2, R3 and RU5**

**Recommendation 2 – That the Department commit that future amendment to the draft Code will not include Rural or Environmental land zonings**

## 2. Minimum lot sizes and subdivision

The MDDG outlines that the first step in preparing complying development certificate applications is to check the land zoning (discussed above) as well as the minimum lot size<sup>5</sup>. Specifically, reference is made to the minimum lot size in outlined in clause 4.1B of the Standard Instrument<sup>6</sup>.

In the EIE however, the requirement to comply with the minimum lot size in an LEP is only provided in the draft development standards for 'Two dwellings side by side'<sup>7</sup>. It is therefore unclear as to whether LEP minimum lot sizes apply for 'Multi-dwelling housing (terraces)', 'Manor houses' and 'Dual occupancies'.

It is also unclear as to whether clause 4.1 in the LEP, which refers to minimum subdivision lot sizes, applies to the Proposed Medium Density Development (see Figure 2 - Map showing minimum subdivision lot sizes in areas subject to the draft Code across the Northern Beaches Council Area).

Allowing the Proposed Medium Density Development as complying development which exceeds local density provisions is likely to result in significant adverse outcomes for our communities, particularly in terms of residential amenity and streetscape/ neighbourhood character.

Presently, only PLEP 2014 contains clause 4.1B, which refers to a minimum lot size for dual occupancies. However, the subdivision of dual occupancies is specifically prohibited. In Manly, MLEP 2013 contains important provisions for restricting medium density development under clause 4.1.

**Recommendation 3 – That the Department clarifies which of the Proposed Medium Density Developments are required to comply with the LEP minimum lot sizes and of those, which clause of the LEP applies (e.g. 4.1 Minimum Subdivision Lot Size or 4.1B Minimum Lot Sizes or both)**

**Recommendation 4 - That subdivisions are only permitted in accordance with the minimum lot sizes outlined in clause 4.1 in LEPs, or if relevant, allow time for Councils to review and amend their LEP to implement a clause 4.1B minimum lots sizes for specific developments**

## 3. Concurrent consent for dwelling and subdivision

Clarification is sought on the intent and wording of the proposed new clause 4.1C, (3)(b) (i) and (ii)<sup>8</sup>. The EIE suggests that many Councils have LEP provisions allowing subdivision where the minimum

<sup>5</sup> Medium Density Design Guide, pg 8, 80, 98, 136

<sup>6</sup> Medium Density Design Guide, pg 8

<sup>7</sup> Statement of Intended Effect, pg 32, specified development

<sup>8</sup> Statement of Intended Effect, pg 19

lot size does not equal the standard for subdivision alone. These instances have not occurred in any of the former Manly, Warringah and Pittwater Local Government Areas; therefore further information is required regarding the intention of this clause.

**Recommendation 5 – That the Department provides more detail to explain the meaning and intent of the proposed new clause 4.1C for concurrent consent for development and subdivision**

#### 4. Impacts on Dwelling Yields and Section 94/94A Contributions

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It is noted that the implementation of the Code may result in a decrease in dwelling yields in some medium density zones. For example, within R3 zones permitting an 11m height under WLEP 2011, a property owner may choose to develop a two storey dual occupancy or manor home on an existing small lot as complying development rather than seek to consolidate the land with adjoining properties to build a three storey residential flat building(s).

It may also result in a significant, rapid increase in dwelling yields in other areas (e.g. under the MLEP 2013 and PLEP 2014), with unexpected population growth that will lead to shortfalls in funding for appropriate services. For example, the Warriewood Valley's Section 94 Plan is based on an assumed potential future dwelling number and demand, such as demand for open space that cannot be readily provided within the valley.

Thus the implementation of the draft Code may result in ad-hoc, unplanned development that may affect:

- Council's ability to meet current and future housing targets
- Section 94/94A Contributions and therefore Council's ability to deliver the required level of infrastructure.

It is therefore vital that Section 94 plans can be reviewed prior to the implementation of the Code.

#### 5. The Design Verification Process

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It is not clear from the draft Code what reliance, if any, the accredited building certifier can place on a Design Verification Statement prepared by the designer. It is imperative that the accredited building certifier is held ultimately responsible for compliance with the Design Criteria as they trained and accredited and may be disciplined for non-compliance. Alternatively, a system could be implemented whereby the accredited building certifier obtains a Compliance Certificate issued by an accredited building designer for the Design Criteria. In this model, designers must be accredited by the Building Professionals Board or another body that is capable of disciplining the designer, and if necessary removing their accreditation.

**Recommendation 6 – That the Department clarifies that accredited building designers are held ultimately responsible for compliance of proposals with the Design Criteria despite obtaining a Design Verification Statement from the designer.**

**Recommendation 7 – That as an alternative, designers be accredited by the Building Professionals Board or like body to issue Compliance Certificates under the EP&A Act for Design Criteria under the draft Code.**



## 6. Non-merit based assessments

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The proposed development controls are less stringent than those in the Northern Beaches LEPs and DCPs (see Part B). As stated in the EIE, complying development must result in predictable outcomes with predictable impacts and have minimal scope for impact on adjoining properties<sup>9</sup>. The criteria for complying development should be more onerous than LEP or DCP requirements because they are not subject to the same merit assessment or consideration of local circumstances that would otherwise be afforded in development assessment.

Medium density residential development is not considered simple and straightforward development. It yields greater residential densities and generates more impacts including impacts on views, privacy, sunlight access, visual bulk and scale. These matters are often the subject of neighbour objections and the lack of detailed merit assessment may contribute to poorer design and amenity outcomes.

An example of where complying development has led to poorer outcomes has been in the implementation of the housing provisions of the Codes SEPP. Many properties in the Northern Beaches Council area enjoy views to the water or bushland. Local provisions encourage the sharing of these views however the Codes SEPP has permitted development resulting in extensive loss of views from neighbouring properties. Where a merit assessment and community engagement would encourage a compromise to achieve view sharing between dwellings, the complying development process does not.

Council is therefore not satisfied the draft Code establishes a sufficiently strict set of controls to offset significant additional development scale/potential and likely resulting adverse impacts. To address these concerns, it is recommended that Council be permitted to set its own principal standards for complying development to cater to local conditions.

**Recommendation 8 - That the Department allows Councils to set principal standards for the Proposed Medium Density Development in the draft Code**

## 7. The certification process and (lack of) community consultation

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As per our previous submissions, there are widely acknowledged concerns with the existing building certification system in NSW. The Department of Planning & Environment's discussion paper, released in May 2015, on the review of the Building Professionals Act 2005 highlights the need for reform of the building regulation and certification process. The lack of transparency, accountability, monitoring by the state government and auditing of work by certifiers needs to be addressed prior to the expansion of complying development.

Issues with the certification system often become a burden on Council, as Council is contacted with complaints and in some cases has stepped in to certify developments where certifiers have gone out of business. In the Northern Beaches, there have also been cases where certifiers have approved developments in violation of the codes.

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<sup>9</sup> Explanation of Intended Effects, pg 7

Council also questions whether private certifiers are willing or equipped to deal with the expansion of complying development, or to adequately consider the proposed design criteria, some of which are subjective.

The complying development process does not provide for community engagement, as the owner or Certifier is not required to consider any submissions. The expansion of complying development to include medium density development without the establishment of appropriate and strictly enforced controls on certifiers has the potential to undermine the community's faith in the planning system.

**Recommendation 9 – That the certification of medium density development as complying development by private building certifiers is delayed until measures are taken to improve the audit and discipline of private certifiers.**

**Recommendation 10 - That the Department allows Councils to charge a fee for enforcement of complying development**

## 8. Medium Density Design Guide

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Council welcomes the addition of the Medium Density Design Guideline (MDDG) to provide guidance on good quality design outcomes. Clarification is required however as to how the MDDG will work with Council controls.

**Recommendation 11 – That the Department clarifies the meaning of the statement “Where Council does adopt the MDDG it will still need to prepare the principle development standards that include height, floor space ratio, landscape area and setbacks” (EIE, pg 8). Does this statement refer to Council’s existing standards, or is there a requirement for Council to provide additional standards for Medium Density Developments?**

**Recommendation 12 – That the Department clarifies the meaning of the statement “Council will use the design guidelines to establish precinct plans and principal controls” (EIE, pg 5). Does this statement mean that Council must undertake a separate process?**

## 9. European and Aboriginal heritage

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The Codes SEPP does not currently require consideration of the impact of proposed development on heritage items in the vicinity of a site. In some cases this has resulted in significant impacts on heritage items. These impacts will increase as the scale and scope of development permitted as complying development increases. This will further undermine the protection of both European and Aboriginal heritage, especially in relation to curtilage, location such as setting, and views and the surrounding streetscape.

Aboriginal heritage is even more difficult to conserve and protect due to sensitive cultural needs of the Aboriginal community and the existing management system. The NSW Office of Environment and Heritage (NSW OEH) manages and regulates Aboriginal cultural heritage, and access to detailed and accurate information is difficult due to historical listing procedures and precedents in which ground truthing of data was not undertaken. As a consequence, Private Certifiers will not be aware of the process required to identify registered sites, the limitations and inaccuracies with existing listings, or the on-site investigations that are required to be undertaken to ensure compliance with the *National Parks and Wildlife Act, 1974*.

**Recommendation 13 – That requirements are included in the Site Analysis to ensure the development takes into consideration any impacts on heritage items in the vicinity of a development site**

**Recommendation 14 – That accredited certifiers are required to check the registers held by the NSW Office of Environment and Heritage (NSW OEH) for Aboriginal Heritage and undertake appropriate site inspections to determine whether Aboriginal objects are located on the site prior to the issue of a complying development certificate.**

## 10. Accessible housing

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The MDDG contains no requirements for the provision of adaptable or accessible dwellings, unlike the State Environmental Planning Policy - 65 Design, Quality of Residential Apartment Development and most Council development control plans. These standards are required to provide certainty that medium density residential developments will cater for people at all stages of life or ability, especially older residents or people with disabilities.

**Recommendation 15 - That the Department includes requirements for a proportion of all multi-dwelling housing to be adaptable or accessible housing**

## 11. Comments on proposed development controls

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The MDDG and EIE appear to contain certain inconsistencies, contradictions and omissions. The following clarifications are therefore recommended:

- Minimum lot width:
  - It is not always clear in the draft Code as to whether the sizes are applicable before or after subdivision. For example, the control for the minimum lot width of 12m for 'two dwellings side by side'<sup>10</sup> is assumed to be the minimum lot width required before subdivision and development of a dual occupancy. This should be clarified where required.
- Attics are permissible for all development types, however there are no provisions to restrict their size and address potential privacy issues. It is recommended to include provisions to address these concerns (e.g. attic to be no more than 50% of floor area below, no windows on the side of the buildings).
- For landscaped areas, it is recommended to provide:
  - A minimum soil depth of 1m
  - Requirements to use locally indigenous species
  - A minimum 2m width to enable planting that can enhance privacy between dwellings and ensure the establishment of low lying shrubs, medium high shrubs, deep soil planting, canopy trees of a size and density to mitigate the height, bulk and scale of the building.
- For landscaped areas forward of the building line:
  - The controls in the draft Code are inconsistent with the MDDG

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<sup>10</sup> Explanation of Intended Effects, pg 32



- For consistency in streetscapes, it is recommended to specify the front boundary setback to be free of any structures, basements, car parking or site facilities other than driveways, letter boxes, garbage storage areas and fences.
- For side setbacks:
  - The controls for 'side setbacks' and 'side boundary envelopes' should be separated for ease of interpretation
  - The controls in the draft Code and MDDG are difficult to interpret as they stand, for example:
    - The controls imply there will be no side boundary envelope for the first 15 metres of the lot. If so, concerns are raised regarding building bulk, articulation and building separation.
    - For two dwellings side by side and multi-dwelling housing, it is not clear whether the side setback of 1.2m applies to the entire site (the controls read as though there is no side setback for the rear of the lot >15m).
  - For dual occupancies and manor homes, the draft Code proposes a side setback of just 0.9m which contradicts the MDDG which states a 1.5m side setback (3.4A)
- For Multi-Dwelling Housing, the draft Code refers only to the size of strata lots (i.e. not Torrens lots)<sup>11</sup>
- For rear setbacks
  - For multi-dwelling housing, the setbacks in the Code differ to those in the MDDG 3.2A which are more detailed depending on the size of the lot. Clarification is required as to which controls apply.
- For building separation between rear "lane" development and dwelling house, clarification is required as to whether this control means 'land' (EIE pg 36) or 'lane' separation (EIE pg 38)
- For subdivision, this sentence is incomplete "It is proposed to expand this part (Subdivision Code) to include Torrens title subdivision – but only when.." <sup>12</sup>.

**Recommendation 16 – That the Department addresses the omissions, inconsistencies and contradictions in the draft Code and MDDG identified Part 11 of this submission**

<sup>11</sup> Explanation of Intended Effect, pg 35

<sup>12</sup> Explanation of Intended Effect, pg 40

## **Part B – Comments specific to the Planning Controls of the former Local Government Areas of Manly, Warringah and Pittwater**

### **12. Manly LEP 2013 and DCP 2013**

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#### **Principal Controls**

The principal controls in the draft Code are significantly less stringent than controls in MLEP 2013 and MDCP 2013 with respect to residential densities, floor space ratio (FSR), landscape areas, rear setbacks, side setbacks and building heights. Complying development certificates under the draft Code would therefore result in a significant increase in density and built forms compared with development requiring a Development Application (DA) under the local planning provisions.

Of particular note in the Manly Plans is the Residential Density Controls which are long established and tested within a suite of planning tools used to manage residential types, density and scale. Requirements for a minimum site area per dwelling are used alongside FSR, building height, open space and setbacks to guide suitable outcomes relating to the context and desired future character of certain areas and managing impacts on surrounding development. This local assessment and structure is likely to be compromised by the draft Code.

#### **Dual Occupancies in Zone R2**

The MLEP 2013 does not contain a clause 4.1B which enables Councils to nominate a minimum lot size for dual occupancies. However, detailed provisions for minimum subdivision lot sizes are provided within the MLEP 2013 clause 4.1, and a minimum site area per dwelling provided with the MDCP 2013 (paragraph 4.1.1 and Map A – Residential Density Areas)

Planning controls for the Manly R2 Zone require residential densities of at least 500sqm of site area per dwelling compared to the draft Code which requires only 200sqm per dwelling (i.e. total minimum lot size of 400sqm for a dual occupancy under the Code compared with 1000sqm for a development application).

On more environmentally sensitive sites sloping towards the foreshore, local density controls require significantly larger sites for dual occupancies compared to the draft Code (750sqm to 1150sqm of site area per dwelling). A DA in these areas would also be subject to a FSR of 0.4:1 to 0.45:1 whereas the draft Code proposes a FSR of 0.5:1 to 0.6:1.

#### **Manor Homes in Zone R1**

Under the MLEP 2013 R1 Zone (in Balgowlah, Fairlight and Manly), a 4 dwelling Manor House would require a 1000-1200sqm site (i.e. 250-300sqm site area per dwelling). However, the draft Code permits such development as complying on a site of only 600sqm.

#### **Development types generally in Zone R2 in relation to height**

The MDCP 2013 contains special height provisions for certain mapped land on steeply sloping sites of Seaforth, Clontarf, Balgowlah Heights and Manly (Bower St only). These are supported with planning controls for wall height and number of storeys. Any complying development that does not adhere to these special height provisions would result in significant adverse impacts on neighboring properties and views.

#### **Development types generally in Zone R2 in relation to setback**

A side setback of a standard 2 storey building, as assessed under the MDCP 2013, would be typically at least 2.7m (depending on wall height and slope). However, the draft Code proposes a side setback of just 1.2m.

#### **Relationship of Minimum Lot Size to FSR**

In the MLEP 2013, land with a minimum lot size of 600sqm for manor homes generally equates to a maximum 0.45:1 FSR whereas the draft Code proposes minimum lot size of 600-700sqm to a maximum 0.6:1 FSR (Multi-dwelling Housing).

In the MLEP 2013, land with a minimum lot size of 250sqm for all other dwelling types generally equates to a maximum 0.6:1 FSR whereas the draft Code proposes a maximum 0.8:1 FSR (Multi-dwelling Housing) or 0.75:1 FSR (2 Side by Side Dwellings) for dwellings with a minimum lot size of 200-300sqm.

The following recommendations are repeated to address the above concerns:

**Recommendation 4 - That subdivisions are only permitted in accordance with the minimum lot sizes outlined in clause 4.1 in LEPs, or if relevant, allow time for Councils to review and amend their LEP to implement a clause 4.1B minimum lots sizes for specific developments**

**Recommendation 8 - That the Department allows Councils to set principal standards for the Proposed Medium Density Development in the draft Code**

### **13. Warringah LEP 2011 and DCP 2011**

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#### **Principal Controls**

The draft Code would apply only in the R3 medium density residential zone within the former Warringah LGA. For these areas, the principal controls in the draft Code vary significantly from those in WLEP 2011 and WDCP 2011 with respect to landscaped areas, side setbacks, side boundary envelopes, rear setbacks and private open space. Thus, complying development under the draft Code could result in a significant increase in building bulk and scale when compared with two storey developments requiring a DA under the local planning provisions.

#### **Zone R2**

The draft Code does not apply to any land zoned R2 Low Density Residential in the WLEP 2011, as none of the Proposed Medium Density Developments are permissible in this zone (i.e. two dwellings side by side, dual occupancies, multi-dwelling housing, and manor homes).

#### **Zone R3**

All of the Proposed Medium Density Developments are permissible within land zoned R3 Medium Density Residential in WLEP 2011. Residential Flat Buildings are also permissible within R3.

#### **Subdivision under WLEP 2011**

WLEP 2011 does not contain clause 4.1B which enables Councils to nominate a minimum lot size for certain development. WLEP 2011 does not specify a minimum lot size for the Proposed Medium Density Development within the R3 medium density residential zones (Figure 2). There are therefore no conflicts between the minimum lot sizes between the WLEP 2011 and the draft Code.



### **Two-dwellings side by side in Zone R3**

These types of developments generally comprise semi-detached and detached dwellings. In Zone R3, there is no minimum lot size for these types of dwellings, thus any developments under the draft Code would result in dwellings with a minimum lot size of 200m<sup>2</sup> per dwelling. These types of developments will most likely be taken up in medium density areas with a current 8.5m height restriction (e.g. Belrose, Brookvale, Beacon Hill and Narrabeen - Figure 3), where development of an existing lot under complying development may be easier than consolidating lots to create higher density developments or residential flat buildings.

Under the code, these lots could be developed with far less landscaped area (i.e. up to 35% instead of 50%), smaller side setbacks (1.2m instead of 4.5m), larger side boundary envelopes (none for the first 15m, 3m and 45 degrees for the rear, instead of 4 or 5m and 45 degrees), fewer parking spaces (1 per dwelling instead of 2) and less private open space (16m<sup>2</sup> instead of 35-60m<sup>2</sup>). These developments would therefore result in increased stormwater runoff, potential noise and privacy issues from adjoining properties, increased building bulk and an increased demand for on-street parking. In addition, residents would have less private open space, increasing demand for, and pressure on, public open spaces.

### **Multi-dwelling housing in Zone R3**

These types of developments generally comprise terrace housing. Only developments which front a road are permissible as complying development under the Code, with master planned housing requiring a DA. These developments propose the same principle standards as above, thus the same issues will result. Only, in addition to the above, rear setbacks for these developments are far less than those allowed in Zone R3 (3m instead of 6m).

It is likely these developments will result in excavation of basement car parks as complying development. It is important that the design of these car parks address impacts of localised flooding and potential damage to Council's unmapped stormwater infrastructure. This is discussed further under section 20 Excavation.

### **Manor House and Dual Occupancies**

These types of developments generally refer to buildings in which dwellings are located above other dwellings. They are Class 2 developments under the National Construction Code.

The Codes SEPP will permit these developments on lots with a minimum area of 600m<sup>2</sup> with a minimum frontage of 15m. These developments will be subject to similar principle standards to those for two dwellings side by side, but with a reduced requirement for private open space which is more in keeping with the WDCP 2011 (8-12sqm compared with 10sqm).

**The following recommendations are repeated to address the above concerns:**

**Recommendation 8 - That the Department allows Councils to set principal standards for the Proposed Medium Density Development in the draft Code**

## **14. Pittwater LEP 2014 and PDCP 2014**

### **Principal Controls**

The principal controls in the draft Code vary significantly from the PLEP 2014 and PDCP 2014 with respect to FSR, landscape areas, rear setbacks, side setbacks and private open space. Thus,

complying development under the draft Code would result in a significant increase in density and scale of development compared to development requiring a DA under the local planning provisions.

#### **Dual occupancies in Zone R2**

The PLEP 2014 currently permits dual occupancy development within the R2 zone. However, dual occupancies are restricted to a minimum lot size of 800sqm and cannot be subdivided. The Code proposes to allow subdivision for the 'two dwellings side by side' option however the resultant outcome is development that is more akin to semi-detached dwellings which are not permitted within the R2 zone under the PLEP. Effectively the outcome is development of a higher density than is prohibited in the low density zone. This does meet the approach of allowing the development to proceed under complying development if the relevant zone allows it. Concern is also raised that under this option the development is required to meet the minimum lot size specified in the LEP for a dual occupancy while under the 'Manor House and Dual Occ' option it is only required to meet a minimum of 600sqm before a dual occupancy can be built and then subdivided.

The subdivision of dual occupancies is not permitted in the PLEP 2014 to allow for affordable rental housing. However, the draft Code allows dual occupancies to be subdivided which would result in the creation of lots that are significantly below the minimum subdivision lot size standard (being 550sqm or 700sqm). This approach is not supported.

Thus the draft Code would result in a rapid increase in dwelling yields and population growth within the R2 zone. This will lead to shortfalls in funding for appropriate services.

#### **Manor Houses in Zone R3**

Under the Code, Manor Houses will be allowed on lots with a minimum area of 600sqm. In the PLEP 2014, Clause 4.5A sets the density controls for 'medium density type' uses in the R3 zone, being a maximum of 1 dwelling per 200sqm. The density standard in the draft Code will allow an increased density of 1 dwelling per 150sqm. This requirement should be amended to 200sqm per dwelling for Manor Homes to bring it into line with the remainder of the code.

#### **Multi dwelling housing in Warriewood Valley**

The Warriewood Valley Land Release project is a joint project between Council and the Department of Planning and Environment. The development of the project is heavily constrained by a number of issues which has been recognised by the Department and thus is subject to specific bespoke planning controls. The proposal for medium density housing as complying development will ignore these issues and may result in substantial development above and beyond what is catered for with substantial negative impacts.

Warriewood Valley was reviewed in 2012 with a dwelling cap set for the entire Release Area. This number was agreed to by Council and the Department based on issues such as water run-off and flooding, traffic, transport and environmental outcomes. The set dwelling yields take into account the cumulative impacts of development so as to not overload the development, and prevent issues such as flooding downstream of the valley and overwhelming safe evacuation routes. The release project also has a detailed water management specification which is based on a certain level of hard space and landscaping which will not be catered for under the code. The dwelling numbers were also agreed to by the Secretary of Department and have been confirmed by the Land and Environment Court to be prohibitions and not standards to be varied.

However the draft code may effectively overload the release project with unsustainable development that exceeds the expected outcomes in terms of dwellings, flooding and traffic impacts. This will undermine the entire release project. Instead of an expected dwelling yield in the range of 32 dwelling per hectare, the code could more than double the amount of dwellings. This does not represent the orderly and economic development of land, and will prevent Warriewood from achieving the goals of the land release project.

#### **Ingleside Land Release Area**

The Ingleside Land Release Area is a joint program between Council and the Department of Planning and Environment. The project is the subject of years of detailed investigation and studies. The project is within a sensitive environment and the project's vision for a sustainable and functional community, including GreenStar certification, relies on a range of outcomes being met. The proposal to extend complying development to medium density is of concern (similar to Warriewood Valley) as development in Ingleside is considered to be complex due to the wide spread of environmental, social and economic issues that need to be addressed.

The vision for Ingleside is a community that achieves the best in sustainability. This includes the goal of reaching a 4 Star GreenStar rating of Australian Best Practice. This requires detailed and thorough assessment of development from rezoning of the precinct through to development assessment and building performance. This requires development standards and controls that are above and beyond base levels. This includes targeted lower water and energy usage, building material recycling and reduced greenhouse gas emissions. There are also a range of other issues that need to be considered such as the need for 0% run off due to the limited ability of the shallow soils to absorb water and the potential impact of downstream flooding through Mona Vale, Warriewood and North Narrabeen. Complying Development is not required to address these issues to the required detail as it is intended for straightforward development. Allowing complying development to proceed in Ingleside will undermine the ability of the project to meet the goals agreed to by Council and the Department.

As well as targeted environmental outcomes, GreenStar requires a range of social and economic targets to be met. This includes a mixture of dwellings sizes and typology to cater for people at all stages of life as well the provision of affordable housing for key workers. The Codes once again are not capable of catering for these issues. The Northern Beaches already suffers from a lack of affordable and appropriate housing and Ingleside will go some of the way to addressing the issue through having specific standards contained within its environmental planning instrument. However concern is raised that extending complying development to medium density will undermine Council's ability to set controls to address these local issues.

**Recommendation 17 – That the subdivision of dual occupancies be prohibited where a Council LEP currently prohibits such subdivision**

**Recommendation 18 – That the development and subdivision of 'two dwellings side by side' only be permitted if semi-detached dwellings are permitted**

**Recommendation 19 – That Warriewood Valley is excluded from the Codes due to the sensitive technical design issues and the dwelling cap agreed to by Council and the Department of Planning and Environment**

**Recommendation 20 – That Ingleside is excluded from the Codes due to the extremely sensitive nature and the goal of achieving a 4 star GreenStar rating**



**Recommendation 21 – That Manor Homes require a minimum of 200 sqm per dwelling, or alternatively, that the draft Code requires compliance with clause 4.5A ‘Density controls for certain residential accommodation’.**

## Part C – Technical Matters

### 15. Sloping land

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Council is concerned there are no provisions to restrict complying development on sloping land, where poor design can lead to negative outcomes in relation to overshadowing, privacy and view loss. There is also a high potential for severe consequences for neighbouring properties, especially in landslip areas.

Having regard to the additional likely impacts for steeply sloping sites (geotechnical, visual etc.) it is recommended that complying development should not be carried out on sites of greater than 15 degrees. This would allow a merit-based assessment for steeply sloping sites.

**Recommendation 22 – That sloping sites of greater than 15 degrees are excluded from the Codes SEPP**

### 16. Stormwater drainage

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The landscaped open space requirements in the draft Code are generally less than required under local provisions, meaning that Proposed Medium Density Development will generate increased stormwater runoff and additional demand on Council's stormwater drainage system (e.g. kerb and gutters and drainage pipelines). This may increase the risk and severity of flooding downstream of the development sites.

Stormwater Certification is therefore a vital component of the draft Code. Council notes that neither the EIE nor the MDDG refer to the proposed means of stormwater certification for complying development. In previous responses to the Discussion Paper, the former Councils proposed certification for On-site Stormwater Detention (OSD) either by:

- Council, subject to the collection of appropriate fee, or
- Qualified specialists, provided they were Accredited Certifiers in Civil Works (drainage works) with the Building Professionals Board and Registered Chartered Engineering Professionals with Engineers Australia.

If external certification is proposed, the State Government would need to guarantee sufficient oversight of specialists, for example, through audits of work.

It is vital that stormwater drainage systems are designed in strict accordance with Council's policies as stormwater runoff may require extensions or modifications of Council's stormwater drainage infrastructure. Given the recent Council merger, Council would require time to consolidate its policies and standards for use by external certifiers. The Department may also wish to provide guidelines for all Councils to ensure consistent external certification processes and the incorporation of water sensitive urban design principles.

**Recommendation 23 – That the Department clarifies the means and mechanisms for stormwater certification**

**Recommendation 24 – That, if external stormwater certification is proposed, a system is implemented to ensure practitioners are accredited and regularly audited, and Councils are given time to adopt new stormwater policy to allow consistent certification**

## 17. Water management

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The Northern Beaches Council area is bounded by Sydney Harbour, Pittwater and the Tasman Sea and contains numerous estuaries, lagoons and creeks. In addition, many localities have a high water table. Due to these factors, a large majority of developments require specialist impact assessments by qualified individuals as well as referrals to the NSW Office of Water to ensure proper management of water reserves and the environment.

Neither the EIE nor the MDDG outline requirements for referrals to the NSW Office of Water under the *Water Management Act 2000* or the need to engage specialist advice. For example, referrals are required where development involves the pumping of water or drainage works, or where buildings or works are proposed within 40 metres of a creek, river, lake or lagoon.

Regarding the provisions in the MDDG for Water Management and Conservation (3.1Y; 3.2Y and 3.4Y), the following comments are provided:

- Council does not support the disposal of stormwater runoff by means of a charged system. Charged systems have the potential to direct stormwater flow to a different catchment and can cause problems for the properties in this Catchment.
- Clarify the requirements to obtain:
  - Geotechnical investigations for any proposed onsite absorption systems to ensure that the land has a suitable absorption capacity
  - Easements over downstream properties for any inter-allotment drainage systems
- The Proposed Medium Density Development should only apply in areas which are serviced by a sewer network. Onsite wastewater systems are not considered feasible for this type of development due to the lack of available space for effluent irrigation.
- In the MDDG, the inclusion of Water Sensitive Urban Design in the principles on Page 78 is positive, however is not represented in the Objectives and Design Criteria on Page 115, 134, 153.

**Recommendation 25 – That developments requiring referrals under the *Water Management Act 2000* are excluded from the draft Code. Alternatively, requirements are included for the designer to seek specialist advice relating to water management and undertake the necessary referrals to the NSW Office of Water for applicable development as required under the *Water Management Act 2000*.**

**Recommendation 26 – That the MDDG is updated to clarify the requirements to obtain Geotechnical investigations and Easements for stormwater systems where required**

**Recommendation 27 – That the Proposed Medium Density Development should only apply in areas serviced by a sewer network**

**Recommendation 28 – That the Objectives and Design Criteria in the MDDG are updated to reflect the inclusion of Water Sensitive Urban Design principles**

## 18. Torrens title subdivision and basement car parks

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The draft Code proposes to allow Torrens title subdivision of multi-dwelling developments with basement car parking, with the use of easements for smaller developments. Council objects to



Torrens title subdivision of properties with basement car parks because these structures are contiguous and require maintenance. Whilst an easement may outline responsibilities, without a governing body such as a body corporate or community title, there is no one party responsible for enforcing them. As well, there is no mechanism to collect funds for maintenance. In instances where maintenance is required or flooding eventuates, property owners contact Council to assist in a resolution. Often there is nothing Council can do to assist with this issue and property owners are subject to ongoing disputes.

**Recommendation 29 – That Torrens title subdivision of developments with basement car parks is excluded as complying development**

## 19. Traffic and parking

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The Northern Beaches suffer from a relative lack of public transport options. This is particularly the case in outer suburban areas. Although the draft Code proposes parking rates in accordance with the Guide to Traffic Generating Development, these provisions are less than required under the relevant DCP in the Northern Beaches Council area. Furthermore, there are no provisions for onsite visitor parking spaces for multi-dwelling housing. This will result in a shift from developments being self-sufficient in parking to having Council's limited on street parking being used. This is particularly a concern for popular tourist areas such as Manly and Palm Beach.

It is noted the MDDG refers to AS2980.1 for parking spaces and circulation<sup>13</sup> and it is assumed this means compliance with AS2890.1. As per our previous submissions, detailed traffic assessment is required for medium density developments as the type of road frontage provision impacts on vehicular access to development sites, and the grades of driveways are often overlooked (e.g. too steep or not wide enough).

Further, certain medium density developments would require changes to traffic control facilities, requiring approval under the Roads Act and Council's Local Traffic Committee.

There is also concern where consecutive approvals result in cumulative impacts of extra dwellings and associated traffic on local and state road networks.

**Recommendation 30 - That on-site car parking is required to be provided at the rate specified under the relevant Council DCP for all forms of proposed Medium Density Development**

**Recommendation 31 – That traffic assessments and parking designs for multi-dwelling housing are required to be referred to Council for approval prior to the issue of a complying development certificate**

**Recommendation 32 – That developers are required to provide traffic and parking statement, prepared by a qualified traffic planner or engineer, with applications for multi-dwelling housing**

## 20. Excavation

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As per previous submissions, Council does not consider it appropriate to permit excavation for basement car parking as complying development. A number of issues arising from basement car

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<sup>13</sup> Medium Density Design Guideline, 3.1F, 3.2F and 3.4F

parking require Council's assessment. Firstly, there is the potential for localised flooding when floodwater overtops the driveway and floods the basement car park (even when the development is not identified as flood affected on the planning certificate). Council may be liable for damages due to flood damage where floodwaters emanate from Council roads so it is imperative that localised flooding is considered at the design stage of a proposal

Secondly, separate approval may be required by the NSW Office of Water if temporary dewatering of the site is required. As discussed above, the decision to request the developer to obtain the approval is based on merit assessment, undertaken by Council (see 17 Water management).

Thirdly, there is the potential for the basement car park to be constructed too close to or over Council's stormwater drainage infrastructure. This may restrict access to Council's stormwater drainage infrastructure in the future for inspection and maintenance purposes.

Finally, excavation in close proximity to boundaries is a constant compliance issue, resulting in damage to adjoining properties. It is recommended that excavation near boundaries be subject to a mandatory dilapidation report being provided to adjoining land holders if excavation exceeds the maximum permitted as exempt development. In addition, any construction methodology that requires structural support to encroach onto adjoining properties should be subject to obtaining the consent of the owners of those properties.

**Recommendation 33 - That basement car parks are excluded as complying development**

**Recommendation 34 – That, if basement car parks are permitted as complying development, a mandatory dilapidation report is provided to adjoining land holders where excavation exceeds the maximum permitted as exempt development**

**Recommendation 35 – That, if basement car parks are permitted as complying development, adjoining property owner's consent is obtained where structural support is proposed to encroach on their property**

**Recommendation 36 – That, if basement car parks are permitted as complying development, separate certification from an appropriately accredited or qualified person is required with respect to driveway design addressing localised flooding issues**

## **21. Vegetation clearance in bushfire zones**

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As identified in the MDDG Part 2C – Landscaped Area, '*Significant landscape features should be protected*'. However, Council is concerned that permitting additional dwellings under complying development within bushfire prone areas could result in the additional clearing of native vegetation, trees and or threatened species under the Rural Fires Act 10/50 Code. The placement of a habitable development closer to the hazard within a property that is within the 10/50 vegetation clearing entitlement area means that vegetation and tree clearing may be extended further into natural areas. Such vegetation and tree clearing change the character of an area and reduce the local amenity that is afforded by tree cover.

**Recommendation 37 – That the Proposed Medium Density Development is excluded as complying development from bushfire prone areas**

## 22. Waste management

It is essential that waste management facilities are designed in accordance with Council's policies to ensure Council can continue to provide its waste collection service. The following changes are recommended to the Waste Management Provisions in the MDDG, the Exempt and Complying Development Codes 2008 (Codes SEPP) and standard conditions of complying development certificates to ensure Council can continue to provide its waste collection service:

### Amendments to the Design Guidelines

- Page 76 Guidelines – 2Z – Waste Management, include the following sentence in second paragraph:  
  
"A waste management plan should be prepared for all stages of the development including any demolition, site preparation and construction as well as the ongoing use of the building. Refer to Council Policies for local waste management practices, services and correct numbers and types of bins which need to be accommodated. "  
  
(This also harmonises with the Waste Management Design Criteria in Part 3. For developments which are complying or by application, Council will be the waste services collection agency and should be consulted in the planning stages.)
- Page 77 – Design guidance table:
  - Include a new point 1: "Refer to Council Policies for local waste management practices and services and correct numbers and types of bins which need to be accommodated."
  - Change point 6 to point 2
  - Point 7 is essentially a repeat of point 4 and could be omitted
  - Omit point 11. Many councils provide separate green waste collection for composting at large, dedicated facilities, so there is no need for composting on site. Additionally, onsite composting requires relatively high maintenance, especially where multiple premises are concerned and there is generally no 'maintenance person' to ensure correct management of the compost. Individual home owners can still compost if they so choose within their own premises/courtyard/balconies etc. from the wide variety of home composting systems commercially available.
- Appendix 1 – Pre-Development Application Checklist, under "Development Details", include a dot point for "Number and mix of waste bins required"
- Appendix 2 – DA Documentation Checklist:
  - Include "Waste Management Plan for Demolition and Construction as well as ongoing use of the development."
  - For "Floor Plans", under Storage Areas, add "including waste storage area"
- Appendix 4 – Site Analysis Checklist, include a dot point for "Proposed waste management plan (demolition, construction and design for ongoing use)"

### Amendments to the Codes SEPP

As the Principal Control for Complying Development, the Exempt and Complying Development Codes 2008 (Codes SEPP) needs to be reviewed in regard to waste management.



The Codes SEPP allows Councils and private certifiers to issue Complying Development Certificates (CDCs) for demolition and building works. CDCs have a mandated set of conditions which do not require sustainable management of waste during demolition and construction. The only reference in relation to waste requires that "demolition materials and waste materials must be disposed of at a waste management facility". This places significant pressure on existing waste management facilities in NSW and does not ensure that waste is disposed of in a sustainable method.

Council requests that NSW Department of Planning and Environment amend the Codes SEPP to ensure the sustainable disposal of construction and demolition waste and to encourage the recycling and reuse of materials. Amending the conditions relating to Waste Management Plans, and relating to certification that plans have been implemented, would improve current practices.

Following is a set of proposed conditions for Complying Development Certificates. The conditions are not overly prescriptive but we believe this would be the first step towards better practice by both builders and certifiers. The conditions could be further enhanced following a trial period and review.

### Proposed Amendments to Conditions for Complying Development Certificates

#### A. Condition for Waste Management Plan

The existing condition 3 from Schedule 8 and 9 has been amended as highlighted below.

Proposed amendments to the SEPP include:

- Schedule 6 – insert condition X as a new clause.
- Schedule 7 – insert condition X as a new clause.
- Schedule 8 – replace Clause 3 Waste Management with new condition X
- Schedule 9 – replace Clause 3 Waste Management with new condition X

##### *Condition X Waste Management*

- (1) A waste management plan for the work must be submitted to the principal certifying authority at least 2 days before work commences on the site.
  - (a) All bricks, tiles, timber, metals, glass and excavation material must be reused on site or recycled at a waste recycling outlet.
- (2) The waste management plan must (in accordance with subclause (1) (a)):
  - (a) identify all waste (including excavation, demolition and construction waste material) that will be generated by the work on the site, and
  - (b) identify the quantity of waste material, in tonnes and cubic metres, to be:
    - (i) reused on-site, and
    - (ii) recycled on-site and off-site, and
    - (iii) disposed of off-site, and
  - (c) if waste material is to be reused or recycled on-site—specify how the waste material will be reused or recycled on-site, and

*(d) if waste material is to be disposed of or recycled off-site—specify the contractor who will be transporting the material and the waste facility or recycling outlet to which the material will be taken.*

*(3) A garbage receptacle must be provided at the work site before works begin and must be maintained until the works are completed.*

*(4) The garbage receptacle must have a tight fitting lid and be suitable for the reception of food scraps and papers.*

**B. Condition for the Management of Site**

Proposed amendment to the standard condition headed *Maintenance of Site* to include:

Schedule 6 – amend Clause 9 (2) with new sub-clause 2

Schedule 7 – amend Clause 6 (2) with new sub-clause 2

Schedule 8 – amend Clause 10 (2) with new sub-clause 2

Schedule 9 – amend Clause 9 (2) with new sub-clause 2

*Sub-condition*

*(2) Waste materials (including excavation, demolition and construction waste materials) must be managed on the site and then disposed of at a waste management facility in accordance with the waste management plan.*

**Recommendation 38 - That the Department amend the MDDG and Codes SEPP as described in Part 22 of this submission to ensure the sustainable disposal of construction and demolition waste and encourage the recycling and reuse of materials**

## Maps of affected areas

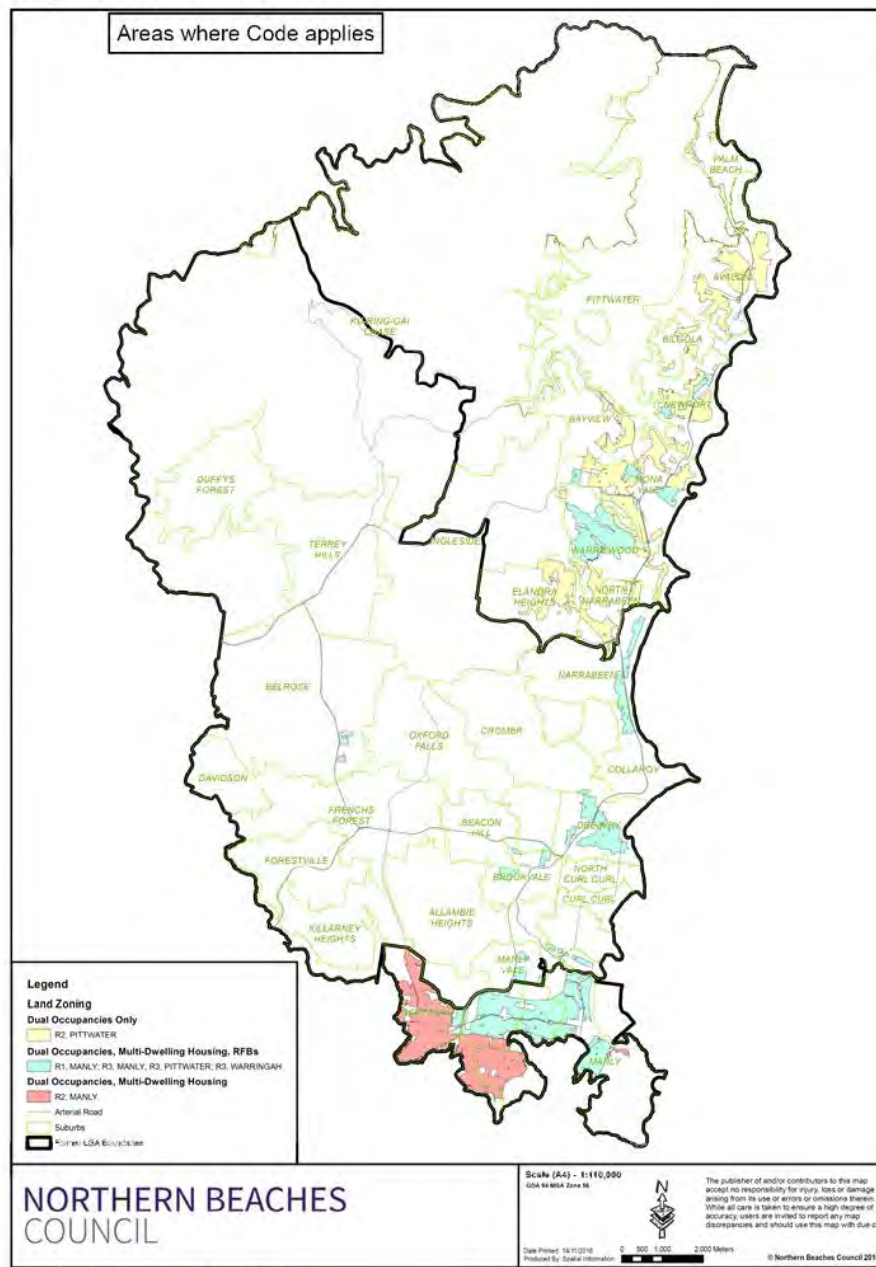


Figure 1 – Map showing permissibility of the Proposed Medium Density Development in areas subject to the draft Code across the Northern Beaches Council Area



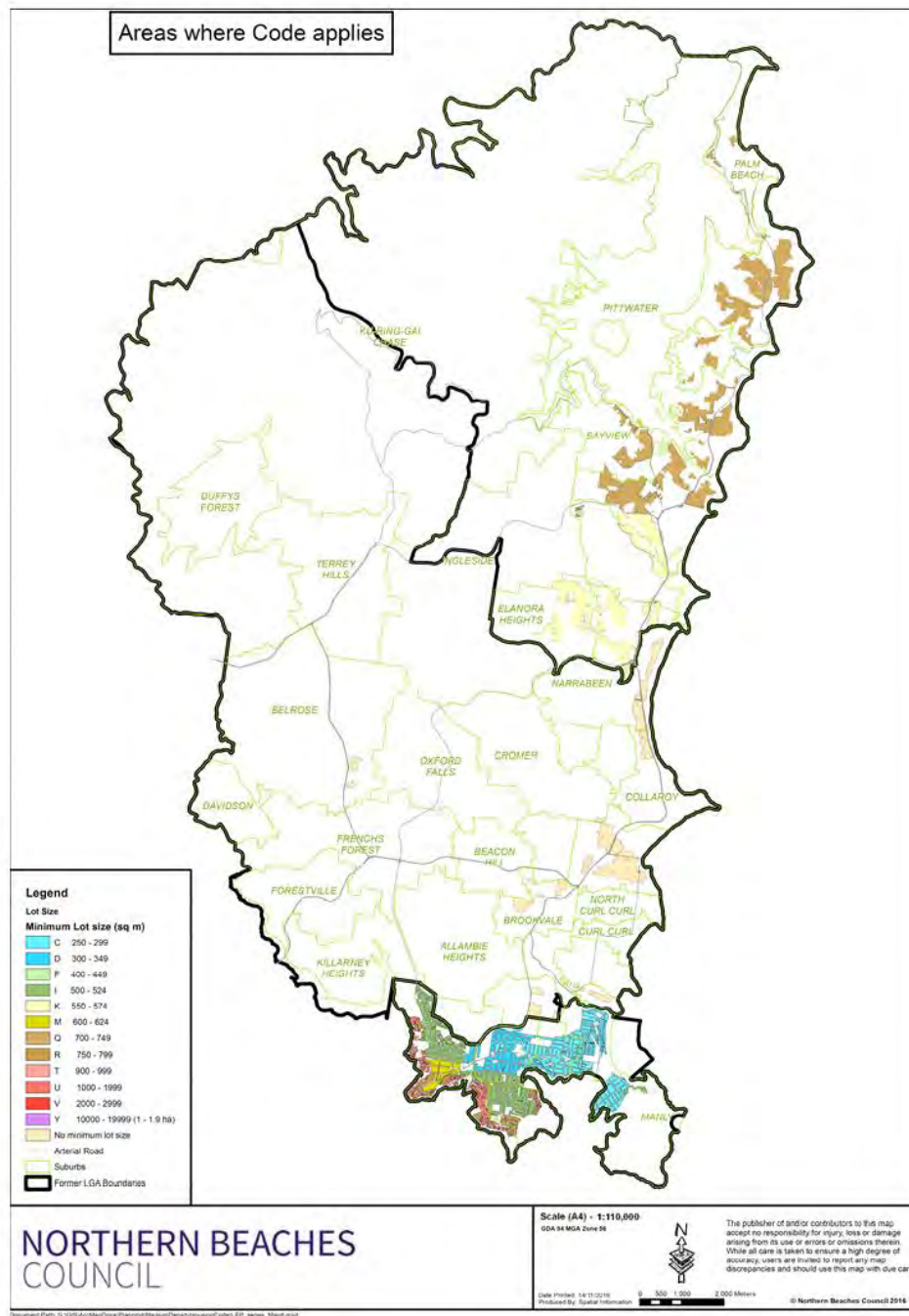


Figure 2 - Map showing minimum subdivision lot sizes in areas subject to the draft Code across the Northern Beaches Council Area

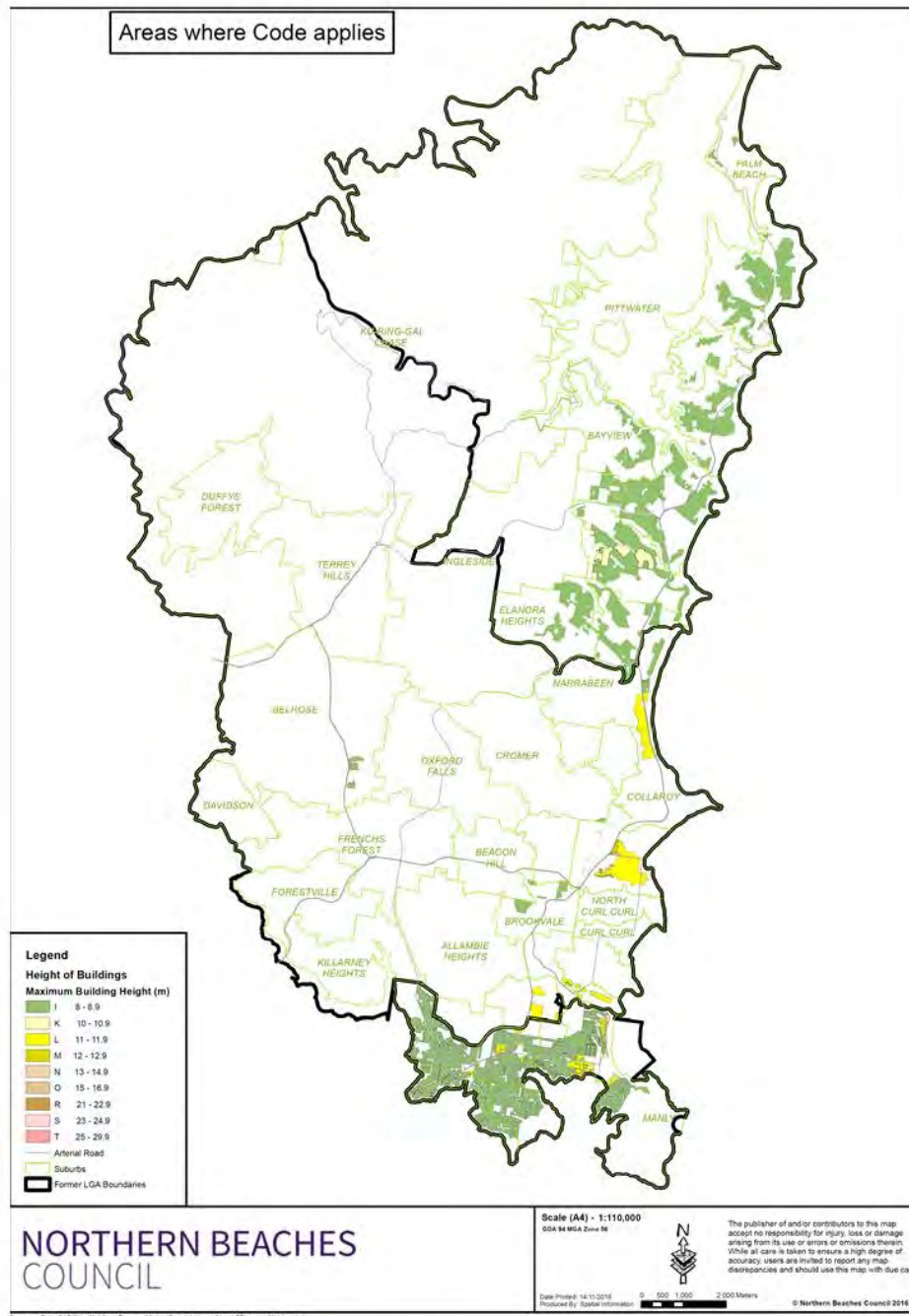


Figure 3 – Map showing permissible building heights in areas subject to the draft Code across the Northern Beaches Council Area

## Table of Recommendations

Recommendation 1 - That the Department confirms the draft Code will permit the the development of dual occupancies (attached and detached), multi-dwelling housing, and manor homes as complying development only where it is first permitted by Council within Zones R1, R2, R3 and RU5

Recommendation 2 – That the Department commit that future amendment to the draft Code will not include Rural or Environmental land zonings

Recommendation 3 – That the Department clarifies which of the Proposed Medium Density Developments are required to comply with the LEP minimum lot sizes and of those, which clause of the LEP applies (e.g. 4.1 Minimum Subdivision Lot Size or 4.1B Minimum Lot Sizes or both)

Recommendation 4 - That subdivisions are only permitted in accordance with the minimum lot sizes outlined in clause 4.1 in LEPs, or if relevant, allow time for Councils to review and amend their LEP to implement a clause 4.1B minimum lots sizes for specific developments

Recommendation 5 – That the Department provides more detail to explain the meaning and intent of the proposed new clause 4.1C for concurrent consent for development and subdivision

Recommendation 6 – That the Department clarifies that accredited building designers are held ultimately responsible for compliance of proposals with the Design Criteria despite obtaining a Design Verification Statement from the designer.

Recommendation 7 – That as an alternative, designers be accredited by the Building Professionals Board or like body to issue Compliance Certificates under the EP&A Act for Design Criteria under the draft Code.

Recommendation 8 - That the Department allows Councils to set principal standards for the Proposed Medium Density Development in the draft Code

Recommendation 9 – That the certification of medium density development as complying development by private building certifiers is delayed until measures are taken to improve the audit and discipline of private certifiers.

Recommendation 10 - That the Department allows Councils to charge a fee for enforcement of complying development

Recommendation 11 – That the Department clarifies the meaning of the statement “Where Council does adopt the MDDG it will still need to prepare the principle development standards that include height, floor space ratio, landscape area and setbacks” (EIE, pg 8). Does this statement refer to Council’s existing standards, or is there a requirement for Council to provide additional standards for Medium Density Developments?

Recommendation 12 – That the Department clarifies the meaning of the statement “Council will use the design guidelines to establish precinct plans and principal controls” (EIE, pg 5). Does this statement mean that Council must undertake a separate process?

Recommendation 13 – That requirements are included in the Site Analysis to ensure the development takes into consideration any impacts on heritage items in the vicinity of a development site

Recommendation 14 – That accredited certifiers are required to check the registers held by the NSW Office of Environment and Heritage (NSW OEH) for Aboriginal Heritage and undertake appropriate site inspections to determine whether Aboriginal objects are located on the site prior to the issue of a complying development certificate.

Recommendation 15 - That the Department includes requirements for a proportion of all multi-dwelling housing to be adaptable or accessible housing

Recommendation 16 – That the Department addresses the omissions, inconsistencies and contradictions in the draft Code and MDDG identified Part 11 of this submission



- Recommendation 17 – That the subdivision of dual occupancies be prohibited where a Council LEP currently prohibits such subdivision
- Recommendation 18 – That the development and subdivision of ‘two dwellings side by side’ only be permitted if semi-detached dwellings are permitted
- Recommendation 19 – That Warriewood Valley is excluded from the Codes due to the sensitive technical design issues and the dwelling cap agreed to by Council and the Department of Planning and Environment
- Recommendation 20 – That Ingleside is excluded from the Codes due to the extremely sensitive nature and the goal of achieving a 4 star GreenStar rating
- Recommendation 21 – That Manor Homes require a minimum of 200 sqm per dwelling, or alternatively, that the draft Code requires compliance with clause 4.5A ‘Density controls for certain residential accommodation’.
- Recommendation 22 – That sloping sites of greater than 15 degrees are excluded from the Codes SEPP
- Recommendation 23 – That the Department clarifies the means and mechanisms for stormwater certification
- Recommendation 24 – That, if external stormwater certification is proposed, a system is implemented to ensure practitioners are accredited and regularly audited, and Councils are given time to adopt new stormwater policy to allow consistent certification
- Recommendation 25 – That developments requiring referrals under the *Water Management Act 2000* are excluded from the draft Code. Alternatively, requirements are included for the designer to seek specialist advice relating to water management and undertake the necessary referrals to the NSW Office of Water for applicable development as required under the *Water Management Act 2000*.
- Recommendation 26 – That the MDDG is updated to clarify the requirements to obtain Geotechnical investigations and Easements for stormwater systems where required
- Recommendation 27 – That the Proposed Medium Density Development should only apply in areas serviced by a sewer network
- Recommendation 28 – That the Objectives and Design Criteria in the MDDG are updated to reflect the inclusion of Water Sensitive Urban Design principles
- Recommendation 29 – That Torrens title subdivision of developments with basement car parks is excluded as complying development
- Recommendation 30 – That on-site car parking is required to be provided at the rate specified under the relevant Council DCP for all forms of proposed Medium Density Development
- Recommendation 31 – That traffic assessments and parking designs for multi-dwelling housing are required to be referred to Council for approval prior to the issue of a complying development certificate
- Recommendation 32 – That developers are required to provide traffic and parking statement, prepared by a qualified traffic planner or engineer, with applications for multi-dwelling housing
- Recommendation 33 – That basement car parks are excluded as complying development
- Recommendation 34 – That, if basement car parks are permitted as complying development, a mandatory dilapidation report is provided to adjoining land holders where excavation exceeds the maximum permitted as exempt development
- Recommendation 35 – That, if basement car parks are permitted as complying development, adjoining property owner’s consent is obtained where structural support is proposed to encroach on their property

Recommendation 36 – That, if basement car parks are permitted as complying development, separate certification from an appropriately accredited or qualified person is required with respect to driveway design addressing localised flooding issues

Recommendation 37 – That the Proposed Medium Density Development is excluded as complying development from bushfire prone areas

Recommendation 38 - That the Department amend the MDDG and Codes SEPP as described in Part 22 of this submission to ensure the sustainable disposal of construction and demolition waste and encourage the recycling and reuse of materials

DUAL OCCUPANCY						
Key Provisions	Former Pittwater		Former Warringah		Former Manly	
	Existing DA Controls	New CDC Outcome	Existing DA Controls	New CDC Outcome	Existing DA Controls	New CDC Outcome
<b>Permissibility to construct development</b>	Permissible to construct in R2 & R3 zones.	CDC possible in R2 and R3 zones but: not on battle-axe lots; not involving a secondary dwelling / group home; not building over easement; not altering a garage forward of building line and; not affecting a heritage item or draft heritage item. Special requirements for CDC on bushfire or flood prone land. Each dwelling must have lawful access to public road at completion.	Permissible to construct in R3 zone.	CDC possible with same restrictions as listed under corresponding former Pittwater section.	Permissible to construct in R1, R2 and R3 zones.	CDC possible in R1, R2 and R3 zone with same restriction as listed under corresponding former Pittwater section.
<b>Minimum Site Size for Construction of Dual Occupancy</b>	800sqm	800sqm,	No Minimum site size for dual occupancy development.	400sqm	Residential Density Control in DCP requires a site for 2 dwellings to have between 100sqm and 2,300sqm in area, depending upon which Residential Density Area the site is located.	400sqm
<b>Minimum Site Width</b>		12m		12m		12m
<b>Maximum Building Height</b>	8.5m in R2 zone. 10.5m – 11m in R3 zone. 8.5m in R5 zone Second dwelling of detached dual occupancy must be	8.5m	11m	8.5m	8.5m – 11m in R1 8.5m in R2 11m in R3	8.5m



DUAL OCCUPANCY						
Key Provisions	Former Pittwater		Former Warringah		Former Manly	
	Existing DA Controls	New CDC Outcome	Existing DA Controls	New CDC Outcome	Existing DA Controls	New CDC Outcome
	single storey(DCP)					
<b>Maximum Gross Floor Area (GFA) Of All Buildings</b>	No equivalent control.  Maximum FSR in DCP variable between 0.3:1 and 0.4:1	For sites between 800sqm and 2,000sqm in area: 25% of site area + 300sqm.  For sites over 2,000sqm: 800sqm		For sites between 400sqm and 2,000sqm in area: 25% of site area + 300sqm.  For sites over 2,000sqm: 800sqm		For sites between 400sqm and 2,000sqm in area: 25% of site area + 300sqm.  For sites over 2,000sqm: 800sqm
<b>Front Setbacks</b>	6.5m or established building line, whichever is greatest.	Average of adjoining development on either side.	6.5m  3.5m to secondary frontage	Average of adjoining development on either side.	6m or prevailing setback in street	Average of adjoining development on either side.
<b>Side Setbacks</b>	2.5m to one side, 1m to other,	Variable between 0.9m and 2.5m, based upon lot width and building height.	4.5m	Variable between 0.9m and 2.5m, based upon lot width and building height.	1/3 height of proposed building wall	Variable between 0.9m and 2.5m, based upon lot width and building height.
<b>Rear Setbacks</b>	6.5m	Variable between 3m and 15m, based upon lot area and building height.	6m	Variable between 3m and 15m, based upon lot area and building height.	8m	Variable between 3m and 15m, based upon lot area and building height.
<b>Car Parking</b>	1 space for 1 bed dwellings;  2 spaces for 2+ bed dwellings.  (DCP controls)	1 space for each dwelling	2 spaces for each dwelling  (DCP controls)	1 space for each dwelling	2 spaces for each dwelling  (DCP controls)	1 space for each dwelling

DUAL OCCUPANCY						
Key Provisions	Former Pittwater		Former Warringah		Former Manly	
	Existing DA Controls	New CDC Outcome	Existing DA Controls	New CDC Outcome	Existing DA Controls	New CDC Outcome
<b>Subdivision</b>	Yes, strata or torrens title.	Yes, strata or torrens title.	Yes, strata or torrens title.	Yes, strata or torrens title.	Yes, strata or torrens title.	Yes, strata or torrens title.
<b>Minimum Resultant Lot Criteria for Subdivision</b>	<p>Torrens title (and strata title in R2): 700sqm north of Mona Vale Rd and 550sqm south of Mona Vale Rd.</p> <p>No minimum lot size for strata title in R3 or any dual occupancy approved on or before 2 June 2003.</p>	<p>Minimum lot sizes for torrens title: 420sqm north of Mona Vale Rd and 330sqm south of Mona Vale Rd. (60% of applicable minimum)</p> <p>For strata title subdivisions: each dwelling must have lawful frontage to a public road (not laneway); no dwelling to be located behind the other on single frontage lots; each resulting lot must have a minimum width at building line of 6m; for dual occupancies not above or below one another, minimum ground floor area of each strata lot must be 180sqm (excludes common areas).</p>	No minimum lot size in R3 zone.	200sqm	<p>Minimum lot size in R1 zone is 250sqm or 300sqm;</p> <p>minimum lot size in R2 zone ranges between 500sqm and 1,150sqm;</p> <p>minimum lot size in R3 zone is 250sqm.</p>	Minimum lot size: 60% of the applicable minimum lot size under the LEP.

## MANOR HOUSES

**Note:** Manor houses were not previously defined or permissible in any of the Northern Beaches former LGA planning instruments. Consequently, there are no existing planning controls specific to this form of development.

Key Provisions	Former Pittwater	Former Warringah	Former Manly
	New CDC Outcome	New CDC Outcome	New CDC Outcome
<b>Permissibility to construct development</b>	CDC possible in R3 zones but: not on battle-axe lots; not involving a secondary dwelling / group home; not building over easement; not altering a garage forward of building line and; not affecting a heritage item or draft heritage item. Special requirements for CDC on bushfire or flood prone land. Each dwelling must have lawful access to public road at completion.	CDC possible in R3 zone with same restrictions as listed under corresponding former Pittwater section.	CDC possible in R1, R2 and R3 zone with same restriction as listed under corresponding former Pittwater section.
<b>Minimum Site Size to Construct a Manor House</b>	400 sqm	400sqm	400sqm
<b>Minimum Site Width</b>	12m	12m	12m
<b>Maximum Building Height</b>	8.5m	8.5m	8.5m
<b>Maximum Gross Floor Area (GFA) Of All Buildings</b>	25% of the lot area + 150m <sup>2</sup> to a maximum of 400m <sup>2</sup>	25% of the lot area + 150m <sup>2</sup> to a maximum of 400m <sup>2</sup>	25% of the lot area + 150m <sup>2</sup> to a maximum of 400m <sup>2</sup>
<b>Front Setbacks</b>	Average of adjoining development on either side.	Average of adjoining development on either side.	Average of adjoining development on either side.
<b>Side Setbacks</b>	A manor house must have a minimum side setback of 1.5m and, for any part of a manor house more than 10m behind the building line and higher than 4.5m above the existing ground level, the minimum side boundary setback is: $s = h - 3m$ where,	A manor house must have a minimum side setback of 1.5m and, for any part of a manor house more than 10m behind the building line and higher than 4.5m above the existing ground level, the minimum side boundary setback is: $s = h -$	A manor house must have a minimum side setback of 1.5m and, for any part of a manor house more than 10m behind the building line and higher than 4.5m above the existing ground level, the minimum side boundary setback is: $s = h - 3m$ where,



## MANOR HOUSES

**Note:** Manor houses were not previously defined or permissible in any of the Northern Beaches former LGA planning instruments. Consequently, there are no existing planning controls specific to this form of development.

Key Provisions	Former Pittwater	Former Warringah	Former Manly
	New CDC Outcome	New CDC Outcome	New CDC Outcome
	's' is the minimum setback in metres, and 'h' is the height of the part of the building in metres.	3m where, 's' is the minimum setback in metres, and 'h' is the height of the part of the building in metres.	's' is the minimum setback in metres, and 'h' is the height of the part of the building in metres.
<b>Rear Setbacks</b>	Variable between 6m and 15m, based upon lot area and building height.	Variable between 6m and 15m, based upon lot area and building height.	Variable between 6m and 15m, based upon lot area and building height.
<b>Car Parking</b>	1 space for each dwelling	1 space for each dwelling	1 space for each dwelling
<b>Subdivision</b>	Yes, strata title only.	Yes, strata title only.	Yes, strata title only.
<b>Minimum Resultant Lot Criteria for Subdivision</b>	Cannot also involve a secondary dwelling, boarding house, group home or a dual occupancy not approved as complying development.  The subdivision must not contravene any condition of a development consent or complying development certificate.	Cannot also involve a secondary dwelling, boarding house, group home or a dual occupancy not approved as complying development.  The subdivision must not contravene any condition of a development consent or complying development certificate.	Cannot also involve a secondary dwelling, boarding house, group home or a dual occupancy not approved as complying development.  The subdivision must not contravene any condition of a development consent or complying development certificate.

## MULTI DWELLING HOUSING (TERRACES) AND ATTACHED DEVELOPMENT

Multi dwelling housing (terraces) means multi dwelling housing where all dwellings are attached and face, and are generally aligned along, 1 or more public roads.

Key Provisions	Former Pittwater		Former Warringah		Former Manly	
	Existing DA Controls	New CDC Outcome	Existing DA Controls	New CDC Outcome	Existing DA Controls	New CDC Outcome
<b>Permissibility to construct development</b>	Permissible to construct in R3 zone	CDC possible in R3 zones but: not on battle-axe lots; not involving a secondary dwelling / group home; not building over easement; not altering a garage forward of building line; not affecting a heritage item or draft heritage item and, not on bush fire prone land. Special requirements for CDC on flood prone land. Each dwelling must have lawful access to public road at completion.	Permissible to construct in R3 zone.	CDC possible with same restrictions as listed under corresponding former Pittwater section.	Permissible to construct in R1, R2 and R3 zones.	CDC possible in R1, R2 and R3 zone with same restriction as listed under corresponding former Pittwater section.
<b>Minimum Site Size to Construct Terraces</b>	No minimum site size requirement.	600sqm	No minimum site size for the erection of a multi unit housing development.	600sqm	No minimum site size for the erection of a multi unit housing development.	600sqm
<b>Minimum Site Width</b>	Street frontage of site must be $\geq \frac{1}{3}$ of the length of the longest side boundary (DCP control)	18m measured at the building line.	No equivalent control	18m measured at the building line.	No equivalent control	18m measured at the building line.
<b>Density Control</b>	Except for the Warriewood Valley Release Area, which has stipulated dwelling ranges, the maximum density standard for multi dwelling housing is 1	No equivalent control.	No density control.	No equivalent control	Residential Density Control in DCP requires a site to have between 50 and 1,150sqm in area per dwelling proposed, depending upon which Residential Density Area	

## MULTI DWELLING HOUSING (TERRACES) AND ATTACHED DEVELOPMENT

Multi dwelling housing (terraces) means multi dwelling housing where all dwellings are attached and face, and are generally aligned along, 1 or more public roads.

Key Provisions	Former Pittwater		Former Warringah		Former Manly	
	Existing DA Controls	New CDC Outcome	Existing DA Controls	New CDC Outcome	Existing DA Controls	New CDC Outcome
	dwelling per 200sqm of site area.				the site is located.	
<b>Maximum Building Height</b>	10.5m – 11m	9m	11m	9m	8.5m – 11m in R1 8.5m in R2 11m in R3	9m
<b>Maximum Gross Floor Area (GFA) Of All Buildings</b>	No equivalent control.	80% of the site area.	No equivalent control	80% of lot area	No equivalent control	R1, R2 - 60% of lot area R3 - 80% of lot area
<b>Front Setbacks</b>	6.5m or established building line, whichever is greatest.	Average of adjoining development on either side.	6.5m  3.5m to secondary frontage	Average of adjoining development on either side.	6m or prevailing setback in street	Average of adjoining development on either side.
<b>Side Setbacks</b>	Where the wall height is 3m or less, the minimum side setback is 3m.  Where wall height is > 3m the minimum setback shall be  $S = 3 + (H - 2) / 4$  S = setback distance in metres H = height of wall in metres.	1.5m	2m	Multi dwelling housing (terraces) must have a minimum side setback of 1.5m.	½ height of proposed building wall	Multi dwelling housing (terraces) must have a minimum side setback of 1.5m.



## MULTI DWELLING HOUSING (TERRACES) AND ATTACHED DEVELOPMENT

Multi dwelling housing (terraces) means multi dwelling housing where all dwellings are attached and face, and are generally aligned along, 1 or more public roads.

Key Provisions	Former Pittwater		Former Warringah		Former Manly	
	Existing DA Controls	New CDC Outcome	Existing DA Controls	New CDC Outcome	Existing DA Controls	New CDC Outcome
<b>Rear Setbacks</b>	As for side setbacks	Variable between 3m and 15m, based upon lot area and building height.	6m	Variable between 6m and 15m, based upon lot area and building height.	8m	Variable between 6m and 15m, based upon lot area and building height.
<b>Car Parking</b>	1 space for 1 bed dwellings;  2 spaces for 2+ bed dwellings.  (DCP controls)	At least one off-street parking space for each dwelling	2 spaces for each dwelling  (DCP controls)	At least one off-street parking space for each dwelling	2 spaces for each dwelling  (DCP controls)	At least one off-street parking space for each dwelling
<b>Subdivision</b>	Yes, strata, torrens title or community title.	Yes, strata or torrens title.	Yes, strata, torrens or community title.	Yes, strata or torrens title.	Yes, strata, torrens or community title.	Yes, strata or torrens title.
<b>Mandatory Resultant Lot Criteria for Subdivision</b>	No minimum lot size.	Minimum lot size: 200sqm  Subdivision must not contravene any condition of consent.  Each dwelling must have frontage to a public road (not a lane).  No dwelling must be located behind any other dwelling on the same lot (except corner lot or block with double frontage).  Each resulting lot must have a minimum width of 6m measured	No minimum lot size in R3 zone.	Minimum lot size: 200sqm  Subdivision must not contravene any condition of consent.  Each dwelling must have frontage to a public road (not a lane).  No dwelling must be located behind any other dwelling on the same lot (except corner lot or block with double	Minimum lot size in R1 zone is 250sqm or 300sqm;  minimum lot size in R2 zone ranges between 500sqm and 1,150sqm;  minimum lot size in R3 zone is 250sqm.	200sqm  Subdivision must not contravene any condition of consent.  Each dwelling must have frontage to a public road (not a lane).  No dwelling must be located behind any other dwelling on the same lot (except corner lot or block with double

## MULTI DWELLING HOUSING (TERRACES) AND ATTACHED DEVELOPMENT

Multi dwelling housing (terraces) means multi dwelling housing where all dwellings are attached and face, and are generally aligned along, 1 or more public roads.

Key Provisions	Former Pittwater		Former Warringah		Former Manly	
	Existing DA Controls	New CDC Outcome	Existing DA Controls	New CDC Outcome	Existing DA Controls	New CDC Outcome
		at the building line.  Only 1 dwelling on each resultant lot.		frontage).  Each resulting lot must have a minimum width of 6m measured at the building line.  Only 1 dwelling on each resultant lot.		frontage).  Each resulting lot must have a minimum width of 6m measured at the building line.  Only 1 dwelling on each resultant lot.

# PLANNING PROPOSAL

Amendments to  
Manly Local Environmental Plan 2013  
and  
Pittwater Local Environmental Plan 2014

June 2018  
(submission for  
Gateway  
Determination)



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## Part 1 – Intended Outcomes

The intended outcome of the Planning Proposal is that the Low Rise Medium Density Code would not apply for certain development types in all the R2 Low Density Residential zones in the Northern Beaches LEPs and the R3 Medium Density Residential zone for Warriewood Valley in the Pittwater LEP. These amendments are to retain the zones' strategic intent in response to the Low Rise Medium Density Code which will otherwise permit manor houses, multi-dwelling units and dual occupancy as Complying Development.

The proposed amendments will:

- prohibit multi-dwelling housing (including terraces) and manor houses (inserted under Code SEPP Amendment - Low Rise Medium Density 2017) in zone R2 Low Density Residential zone under the Manly LEP 2011; and
- prohibit dual occupancy in zone R2 Low Density Residential zone under the Manly LEP 2011 and Pittwater LEP 2014.
- prohibit dual occupancy and multi-dwelling housing in relation to certain land within zone R3 Medium Density Residential zone Pittwater LEP 2014 located in Warriewood Valley as contained within the LEP's Urban Release Area Map.

In relation to dual occupancy, consideration may be given to retaining permissibility (where permissibility currently exists in Manly and Pittwater LEPs) when carried out on land with sites' area of greater than 800sqm consistent with existing provisions in the Pittwater LEP. Studies to be prepared as outlined in this Planning Proposal will determine its appropriateness in this regard.

It is intended that the submission of this Planning Proposal by 5.00 pm 27 June 2018 with the Department of Planning and Environment and addressing, or identifying that it will address a range of matters raised by the Department will provide the basis for the deferral of the new Low Rise Medium Density Code in its entirety for Northern Beaches Council.

## Part 2 – Explanation of Provisions

The proposal seeks to amend the Land Use Tables for the R2 Zone Low Density Residential Zone of the Manly and Pittwater LEPs and the Land Use Tables for part of the R3 Zone Medium Density Residential Zone (Warriewood Valley only) in response to the impacts of the Low Rise Medium Density Code.

### Manly LEP 2013 Amendments

The land use table for the R2 Zone Low Density Residential Zone in the Manly LEP currently reads as follows:

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

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

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

##### **2 Permitted without consent**

*Home-based child care; Home occupations*

##### **3 Permitted with consent**

*Attached dwellings; Bed and breakfast accommodation; Boarding houses; Boat launching ramps; Boat sheds; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Emergency services facilities; Environmental protection works; Flood mitigation works; Group homes; Health consulting rooms; Home businesses; Home industries; Hostels; Information and education facilities; Jetties; Manor Houses\*; Multi dwelling housing; Neighbourhood shops; Places of public worship; Recreation areas; Recreation facilities (indoor); Respite day care centres; Roads; Secondary dwellings; Semi-detached dwellings; Shop top housing; Signage; Water recreation structures; Water recycling facilities; Water supply systems*

##### **4 Prohibited**

*Advertising structures; Water treatment facilities; Any other development not specified in item 2 or 3*

\* Note: Manor Houses inserted under State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Low Rise Medium Density) 2017 as published 6 April 2018 and to commence on 6 July 2018.

It is proposed that the terms ‘Dual occupancies’, ‘Manor Houses’ and ‘Multi dwelling housing’ are omitted from section 3 Permitted with consent’ in the Zone R2 Low Density Residential land use table above. The consequence is that these uses would not be able to be carried out as Complying Development under the Low Rise Medium Density Code. In this regard clause 1.18(1)(b) State Environmental Planning Policy (Exempt and Complying Development Codes) 2017 relevantly states:

#### **1.18 General requirements for complying development under this Policy**

(1) *To be complying development for the purposes of this Policy, the development must:...*

(b) *be permissible, with consent, under an environmental planning instrument applying to the land on which the development is carried out...*

### Pittwater LEP 2014 Amendments



The land use table for the R2 Zone Low Density Residential Zone in the Pittwater LEP currently reads as follows:

**Zone R2 Low Density Residential**

**1 Objectives of zone**

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.

**2 Permitted without consent**

Home businesses; Home occupations

**3 Permitted with consent**

Bed and breakfast accommodation; Boarding houses; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Environmental protection works; Exhibition homes; Group homes; Health consulting rooms; Home-based child care; Home industries; Jetties; Places of public worship; Respite day care centres; Roads; Secondary dwellings; Veterinary hospitals; Water recreation structures

**4 Prohibited**

Any development not specified in item 2 or 3

It is proposed that the term 'Dual occupancies' is omitted from section 3 'Permitted with consent' in Zone R2 Low Density Residential.

The land use table for the R3 Zone Medium Density Residential Zone in the Pittwater LEP currently reads as follows:

**Zone R3 Medium Density Residential**

**1 Objectives of zone**

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.

**2 Permitted without consent**

Home businesses; Home occupations

**3 Permitted with consent**

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Environmental protection works; Exhibition homes; Group homes; Health consulting rooms; Home-based child care; Home industries; Multi dwelling housing; Neighbourhood shops; Places of public worship; Residential flat buildings; Respite day care centres; Roads; Secondary dwellings; Semi-detached dwellings; Seniors housing; Serviced apartments; Veterinary hospitals

**4 Prohibited**

Any development not specified in item 2 or 3

It is proposed that the terms 'Dual occupancies' and 'Multi dwelling housing' are omitted from section 3 'Permitted with consent' in the Zone R3 Medium Density Residential.

The consequence of omitting a range of land uses from the LEP Land Use Tables as above is that the uses specified would not be able to be carried out as Complying Development under the Low Rise Medium Density Code. In this regard clause 1.18(1)(b) State Environmental Planning Policy (Exempt and Complying Development Codes) 2017 relevantly states:

*1.18 General requirements for complying development under this Policy*

*(1) To be complying development for the purposes of this Policy, the development must:...*

*(b) be permissible, with consent, under an environmental planning instrument applying to the land on which the development is carried out...*

## Part 3 – Justification

### Section A – Need for the Planning Proposal

#### 1. Is the Planning Proposal a result of any strategic study or report?

This Planning Proposal was initiated in response to correspondence received from the Department of Planning and Environment dated 22 May 2018 requiring that the proposal be submitted prior to 27 June 2018. It is understood the Department's stated deadline is required to enable the Minister for Planning to consider deferring the application of the Low Rise Medium Density Code. Due to the time constraints placed on the submission of this Planning Proposal it is understood that further strategic studies may be required in accordance with a Gateway Determination. It is therefore anticipated that the submission of this Planning Proposal will be the starting point for a discussion with the Department of Planning about how best to implement the changes during the period of deferral from the Code (the next 12 months).

Northern Beaches Council has previously undertaken some relevant research and prepared various Report Submissions which consider the impacts of low rise medium density housing as Complying Development. This study was initiated in response to the Department of Planning and Environment exhibition of a Discussion Paper *Options for Low Rise Medium Density Housing as Complying Development*, in late 2015.

The former Councils of Manly, Warringah and Pittwater provided submissions to the Department of Planning and Environment in relation to the Discussion Paper at the time, specifically objecting to proposals allowing dual occupancies, multi-dwelling houses, manor homes and subdivision within all low density residential neighbourhoods.

Northern Beaches Council considered a report at its meeting of the 13 December 2016 on the draft Low Rise Medium Density Code as exhibited by the Department of Planning and Environment. Council considered the exhibited draft Code and resolved to make submissions highlighting major concerns with the Code, including excessive densities and the potential for speculative development in low density areas, particularly in areas under the Manly and Pittwater LEPs. This report is attached (Attachment 2) and the key aspects of the submission may be summarised as follows:

Proposed Development Controls: The principal controls in the draft Code are significantly less stringent than the local planning provisions of Council's LEPs and DCPs with respect to parking, landscape areas, setbacks, and private open space. Greater floor space ratios would be permitted compared with the Pittwater and Manly LEPs, and increased building heights compared with the Manly LEP. Thus implementation of the draft Code would result in increased pressure on street parking, stormwater infrastructure, and an increase in building bulk and scale when compared with two storey developments requiring a development application under the local planning provisions. Council is therefore not satisfied the draft Code establishes a sufficiently strict set of controls to offset significant additional development scale/potential and likely resulting adverse impacts. It is therefore recommended that Council be allowed to set its own principal standards for complying development to cater to local conditions. This would ensure future medium density developments are in keeping with the character of established neighbourhoods.

Residential Densities: The implementation of the draft Code will result in ad-hoc, unplanned development that may affect Council's ability to meet current and future housing targets and its ability to deliver the required level of infrastructure. Of particular concern is the likely increase in density that would result in residential areas under the Manly and Pittwater LEPs, which permit dual occupancies within low density residential zones, subject to strict local density requirements. This increased density will result in significant adverse outcomes for our



communities, particularly in terms of residential amenity and streetscape/ neighbourhood character. An increase in dwelling yields may also result in some medium density areas (e.g. under the Warringah LEP 2011 and in Warriewood Valley). It is therefore vital that Section 94 plans are reviewed prior to the implementation of the Code, and that Warriewood Valley and the Ingleside Land Release area are excluded. Further clarification is also sought from the Department as to how local density provisions will be taken into account.

Private Certification: The proposed expansion of complying development is not supported until issues with the transparency and accountability of the existing private building certification system are addressed. It is also not clear whether issues such as traffic impacts and stormwater design are proposed for private certification. An appropriate system of monitoring is essential to support the certification system, especially if the proposed design verification process is to proceed.

Other Issues: Council's abovementioned submission raises a number of other issues including: potential impacts on European and Aboriginal Heritage, absence of requirements for accessible housing, and technical matters such as stormwater and water management, subdivision, excavation, bushland and waste management.

#### Strategic Study intended to be undertaken with the Planning Proposal

Given the short amount of time given to prepare the Planning Proposal it is anticipated that further strategic analysis may be required to support the Planning Proposal submission.

The Department of Planning and Environment letter dated 22 May 2018 states that this Planning Proposal must address, or identify that it will address certain matters. In this regard the following:

- the area of land zoned R2 Low Density Residential, R1 General Residential and R3 Medium Density Residential;
- the number of lots eligible for manor house or multi-dwelling housing development as complying development under the code in the R2, R1 or R3 zone;
- the number of multi-dwelling housing developments approved by the council in the R2, R1 and R3 zone in the past 5 years

The information required to support the proposal is necessary to ensure that a full understanding of the outcomes of changing the planning controls in the R2 and R3 (part) zone has on the future provisions of housing diversity in the local government area.

## **2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

Council's abovementioned submission to the Department of Planning and Environment dated December 2016 identified major concerns that the release of the Low Rise Medium Density Code would not satisfy the objectives and strategic intent of current planning controls by allowing complying development with objectionable impacts on the Northern Beaches community.

Council submits that the best means of achieving desired objectives would be an exemption from the SEPP (Exempt and Complying) in respect of the Low Rise Medium Density Code. However the Code is intended to commence 6 July 2018 with the only option available to Council to seek to address impacts through amendments to its own planning controls which limit the impacts of the Code.

The Planning Proposal will not resolve all issues with the Code and it is anticipated that amendments to the Code itself will still be required.

## Section B – Relationship to strategic planning framework

### 3. Is the Planning Proposal consistent with the objective and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

#### The Greater Sydney Regional Plan

The Planning Proposal has been reviewed against relevant Outcomes of the Greater Sydney Regional Plan A Metropolis of Three Cities – connecting people published on 18 March 2018. The Plan identifies a number of strategic directions and specific policy settings with regards to transport, housing growth, employment and existing centres.

The Planning Proposal is consistent with a number of general goals of the Regional Plan, in that it would:

- continue deliver new and more diverse housing in strategically determined localities and zones;
- respond to a recognised need (and market demand) for housing in the locality, and
- provide new homes in close proximity to existing infrastructure and services.

#### North District Plan

The Planning Proposal supports the North District Plan vision for housing that is ‘targeted in the right places, aligned to new and enhanced infrastructure’ (p7). It is anticipated that the Planning Proposal will identify LEP amendments to achieve spacial and/or policy based outcomes which improve the delivery of new medium density Complying Development types in more locally targeted places better aligned with local services and facilities.

The Planning Proposal also supports the District Plan’s function ‘to assist councils to plan and deliver for growth and change, and align their local planning strategies to place-based outcomes’ (p16). In this regard the Planning Proposal acknowledges that the anticipated deferral of the new Low Rise Medium Density Code will assist Council in planning and delivering for growth and change under the NSW Codes SEPP. The proposal will seek to identify appropriate statutory mechanisms to improve the delivery of new medium density Complying Development with regard to local place-based outcomes for the Northern Beaches.

The Planning Proposal is considered consistent with, and justified under a number of general directions/ priorities in the North District Plan published on 18 March 2018 as follows.

Planning Priority N1 ‘Planning for a city supported by infrastructure’ is recognised in this Planning Proposal in relation to potential impacts of Complying Development under the Low Rise Medium Density Code. Council submits that the implementation of the draft Code would result in increased pressure on street parking, storm-water infrastructure, and an increase in building bulk and scale when compared with two storey developments requiring a development application under the local planning provisions. The implementation of the draft Code as it stands will result in ad-hoc, unplanned development that may affect Council’s ability to deliver the required level of infrastructure.

Planning Priority N6 ‘Creating and renewing great places...’ The District Plan recognizes that creating capacity for new housing in the right locations requires clear criteria. This Planning Proposal seeks to ensure that capacity of Medium Density Complying Development is provided in the right locations, excluding locations such as low density zoned environments with limited access to jobs and transport.



Planning Priority N9 'Growing and investing in health and education precincts'. Planning for housing in the French's Forest Hospital Precinct, requires particular consideration regarding the application of the new Low Rise Medium Density Code.

Planning Priority N12 'Delivering integrated land use and transport planning and a 30 minute city'. This Planning Proposal seeks to ensure that Complying Development under the Low Rise Medium Density Code is delivered in locations where land use and transport are most integrated.

Planning Priority N17 'Protecting and enhancing scenic and cultural landscapes'. The Planning Proposal is consistent with this priority in seeking to address potential deficits in the draft Codes in protecting and enhancing landscapes. In relation to the Warriewood Valley precinct, the new Low Rise Medium Density Code permits no landscaped area for some dual occupancies, based on lot size. This will result in additional run-off and impacts on water quality as the water management facilities were not designed to deal with the additional flows.

#### **4. Is the Planning Proposal consistent with a council's local strategy or other local strategic plan?**

A review has been undertaken of the Planning Proposal against certain policies and plans of Northern Beaches Council as follows:

##### Northern Beaches Draft Community Strategic Plan 2017-2028 'SHAPE 2028'

The Northern Beaches Community Strategic Plan will be adopted by the Northern Beaches Council by June 2018 following 2 stages of engagement and drafting in September/October 2016 (developing community issues, priorities and visions) and in March/April 2017 (developing draft goals and strategies to achieve the vision).

The Plan is built around themes of community, place, environment and leadership. The objectives and intended outcomes of the Planning Proposal are supported by the Community Strategic Plan and have been reported and resolved by Council.

#### **5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?**

The Planning Proposal is consistent with applicable State Environmental Planning Policies as shown in the following Table 1.

As this Planning Proposal is made with particular consideration of State Environmental Planning Policies (Exempt and Complying Development Codes) 2008, the aims of this SEPP are addressed as follows:

*This Policy aims to provide streamlined assessment processes for development that complies with specified development standards by:*

- (a) providing exempt and complying development codes that have State-wide application, and*

This Planning Proposal supports the state-wide application of Low Rise Medium Density in strategically located lands in accordance with appropriate development standards that are determined based on local housing strategies and not as imposed over existing approval systems. Council submits that the 'state-wide application' of the codes, with particular reference

to the Low Rise Medium Density Code, should not extend to a blanket application across all residential zones in which the specified development types are permissible, including the R2 Low Density Residential zone.

- (b) identifying, in the exempt development codes, types of development that are of minimal environmental impact that may be carried out without the need for development consent, and*

This Planning Proposal does not consider or respond to any exempt development codes.

- (c) identifying, in the complying development codes, types of complying development that may be carried out in accordance with a complying development certificate as defined in the Act, and*

This Planning Proposal seeks to support the appropriate identification of certain types of Complying Development under the Low Rise Medium Density Code including manor houses, multi dwelling housing and dual occupancy. It is recognised that these development types are new forms of Complying Development to be introduced in local neighbourhoods under approval pathways unlike current development assessment processes. In this regard the Planning Proposal provides initial research dealing with the impacts of certain development types as Complying Development under the new Code compared to existing LEP and DCP planning controls under the Development Consent pathway as follows.

#### Manor Houses

Manor Houses are being introduced under the Standard Instrument (LEP) Order from 6 July 2018 and will amend Manly LEP 2013 by inserting 'Manor Houses' as a permitted use in Zone R2 Low Density Residential. While certain other low rise medium density housing is already permitted (see discussion on Multi dwelling housing and Dual Occupancies below), the introduction of Manor Houses as complying development under the Code is considered contrary to LEP Zone objectives to provide for the housing needs of the community within a low density residential environment.

The Code will permit Manor Houses as Complying Development on sites over 600sqm in area i.e. 200sqm per dwelling. The Manly LEP and DCP require minimum site area of between 500sqm and 1150sqm per dwelling (MDCP2013, Schedule, Map A) for residential development in the R2 Low Density zone. The likely density yield under the Code will be in the vicinity of 6 times greater than permitted in the Manly LEP and DCP.

In relation to other aspects of built form such as height, floor area and setback there are also disparities between the development outcomes currently achievable in a DA under the LEP and those to be permitted under the Code. Accordingly the Planning Proposal supports omitting Manor Houses as a permissible use with Consent in the R2 zone under the Manly LEP so as to retain the zones' strategic intent.

#### Multi Dwelling Housing

While multi dwelling housing is currently permitted in the Manly LEP R2 Low Density zone, Council's residential density provisions (MDCP2013, Schedule, Map A) limit the number of dwellings on any site in a similar manner as Manor Houses discussed above (requiring between 500sqm and 1150sqm of site area per dwelling) e.g. A development comprising 8 dwellings requires a site of 4000sqm (500sqm x 8) in the DCP. However, the Code provides examples of multi dwelling housing (terraces) on a standard lot comprising 8 dwellings on a minimum sized lot of 600sqm.

The Code does not recognise the existing minimum lot area requirements that are contained in the Manly DCP 2013. In the absence of a minimum lot area, the Code provides for multi

dwelling housing (terraces) as Complying Development on sites of 600sqm in area and 18m site width at the building line.

In relation to other aspects of built form such as height, floor area and setback there are also disparities between the development outcomes currently achievable in a Development Application under the LEP and those to be permitted under the Code. Accordingly the Planning Proposal supports omitting multi dwelling housing as a permissible use with Consent in the R2 zone under the Manly LEP so as to retain the zones' strategic intent.

#### Dual Occupancies

Dual Occupancies are a permitted land use in Zone R2 Low Density in both the Manly and Pittwater LEPs. Dual Occupancies are a prohibited use in Warringah LEP's R2 zone.

Under the Pittwater LEP (clause 4.1B) Dual Occupancy requires a site area of at least 800sqm to construct a dual occupancy development. Whilst this provision would continue to apply, the Code would permit the subdivision of dual occupancies into lots of between 330-420 sqm (and possibly lower) in the R2 zone, depending on location. This is significantly smaller than the Pittwater LEP which permits subdivision into lots of between 550-700 sqm in the R2 zone, depending on location.

Under the Manly LEP there is no minimum allotment size specified for the construction of a dual occupancy. Residential density controls are instead specified in the Manly DCP. Between 1000 sqm and 2,300 sqm of land is required for dual occupancy development in the R2 zone, depending on location. The Code will override the DCP requirements, permitting dual occupancies on lots of 400 sqm in all areas zoned R2. The Code will also permit the subdivision of dual occupancies into lots of 300-690 sqm (and possibly lower) in the R2 zone, depending on location. This is significantly smaller than the Manly LEP, which permits subdivision into lots of between 500-1150 sqm in the R2 zone, depending on area.

Further analysis may be required in reviewing the impact of this aspect of the Planning Proposal on dwelling supply given that this form of low rise medium density is more common. Some other matters which could be further investigated include options to only permit dual occupancy as Complying Development that cannot be subdivided and/or as a Complying Development type in which one dwelling is not permitted to be located above another dwelling.

Accordingly the Planning Proposal supports omitting dual occupancies as a permissible use with Consent in the R2 zone under the Manly and Pittwater LEPs so as to retain the zones' strategic intent.

#### *(d) enabling the progressive extension of the types of development in this Policy, and*

While this Planning Proposal supports the progressive extension of the types of low rise medium density development in this Policy, Council submits that this Objective is better served following the completion of more comprehensive Local Housing Strategies which are required to be completed by the Greater Sydney Commission in the next 12-24 months.

#### *(e) providing transitional arrangements for the introduction of the State-wide codes, including the amendment of other environmental planning instruments.*

This Planning Proposal supports the deferral of the introduction of the Low Rise Medium Density Code as an appropriate transitional arrangement prior to the making of amendments to Northern Beaches LEPs under this Planning Proposal.



**Table 1. Compliance with State Environmental Planning Policies (SEPPs)**

SEPPs (as at September 2017)		Applicable	Consistent
1	Development Standards	YES	YES
14	Coastal Wetlands	NO	N/A
19	Bushland in Urban Areas	YES	YES
21	Caravan Parks	YES	YES
26	Littoral Rainforests	NO	N/A
30	Intensive Agriculture	NO	N/A
33	Hazardous and Offensive Development	YES	YES
36	Manufactured Home Estates	NO	N/A
44	Koala Habitat Protection	YES	YES
47	Moore Park Showground	NO	N/A
50	Canal Estate Development	YES	YES
52	Farm Dams and Other Works in Land and Water Management Plan Areas	NO	N/A
55	Remediation of Land	YES	YES
62	Sustainable Aquaculture	YES	YES
64	Advertising and Signage	YES	YES
65	Design Quality of Residential Apartment Development	YES	YES
70	Affordable Housing (Revised Schemes)	YES	YES
71	Coastal Protection	YES	YES
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	YES	YES
	(Affordable Rental Housing) 2009	YES	YES
	(Building Sustainability Index: BASIX) 2004	YES	YES
	(Exempt and Complying Development Codes) 2008	YES	YES
	(Housing for Seniors or People with a Disability) 2004	YES	YES
	(Infrastructure) 2007	YES	YES
	(Integration and Repeals) 2016	NO	N/A
	(Kosciuszko National Park – Alpine Resorts) 2007	NO	N/A
	(Kurnell Peninsula) 1989	NO	N/A
	(Mining, Petroleum Production and Extractive Industries) 2007	YES	YES
	(Miscellaneous Consent Provisions) 2007	YES	YES
	(Penrith Lakes Scheme) 1989	NO	N/A
	(Rural Lands) 2008	NO	N/A
	(State and Regional Development) 2011	YES	YES
	(State Significant Precincts) 2005	YES	YES
	(Sydney Drinking Water Catchment) 2011	NO	N/A
	(Sydney Region Growth Centres) 2006	NO	N/A
	(Three Ports) 2013	NO	N/A
	(Urban Renewal) 2010	NO	N/A
	(Western Sydney Employment Area) 2009	NO	N/A
	(Western Sydney Parklands) 2009	NO	N/A

## 6. Is the planning proposal consistent with applicable Ministerial Directions?

Yes. The Planning Proposal is consistent with applicable Directions (as shown in Attachment 1). Comments on each of the applicable directions are provided in Table 2 below.

**Table 2: Ministerial (Local Planning) Directions**

Ministerial Direction	Comment
<b>2 Environment and Heritage</b>	
<b>2.1 Environment Protection Zones</b>	
The objective of this direction is to protect and conserve environmentally sensitive areas.	The Planning Proposal applies to certain lands which are environment sensitive areas but it is noted that the Low Rise Medium Density Code does not apply to Environmental Protection Zones.
<b>2.2 Coastal Protection</b>	
The objective of this direction is to implement the principles in the NSW Coastal Policy	The Planning Proposal applies to certain lands which are in the Coastal Zone but it is noted that the Low Rise Medium Density Code is not a significant consideration in relation to the principles of the NSW Coastal Policy
<b>2.3 Heritage Conservation</b>	
The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	While the Planning Proposal applies to certain lands which are listed as heritage significant, the application of Complying Development is controlled by land based provisions under Part 1 of the Codes SEPP.
<b>3. Housing, Infrastructure and Urban Development</b>	
<b>3.1 Residential Zones</b>	
<p>The objectives of this direction are to:</p> <ul style="list-style-type: none"> <li>a) encourage a variety of choice of housing types to provide for existing and future housing needs,</li> <li>b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and</li> <li>c) to minimise the impact of residential development on the environment and resource lands.</li> </ul>	<p>This direction applies as the Planning Proposal affects land within existing residential zones. In this regard the planning proposal seeks to encourage the provision of housing that deals with the following matters raised in the direction.</p> <p>In relation to 'broaden the choice of building types and locations available in the housing market' the Planning Proposal does not seek to limit broadened housing choice as Complying Development at large, but rather ensure the new types be tested and impacts evaluated to retain the strategic intent of zones and protect local character.</p> <p>In relation to the consideration of 'existing infrastructure and services' the need for efficiencies is recognised in the Planning Proposal</p> <p>In relation to the 'consumption of land' the Planning proposal does not reduce land for housing and associated urban development on the urban fringe.</p> <p>In relation to the need for 'good design' the Planning Proposal supports well designed low rise medium density in appropriate locations and zones.</p> <p>The planning proposal does not permit</p>

	<p>residential development on land that is inadequately serviced.</p> <p>In relation to the residential density of land, the Planning Proposal seek to limit the permissibility of low rise medium development as Complying Development that exceeds established density provisions in Council's LEPs and DCPs.</p>
<b>3.4 Integrating Land Use and Transport</b>	
<p>The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:</p> <p>(a) improving access to housing, jobs and services by walking, cycling and public transport, and</p> <p>(b) increasing the choice of available transport and reducing dependence on cars, and</p> <p>(c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and</p> <p>(d) supporting the efficient and viable operation of public transport services, and</p> <p>(e) providing for the efficient movement of freight.</p>	<p>This direction applies as the planning proposal will alter zones or provisions relating to urban land, including land zoned for residential purposes. In this regard the planning proposal is consistent with the aims, objectives and principles of Improving Transport Choice – Guidelines for planning and development (DUAP 2001).</p>
<b>4. Hazard and Risk</b>	
<b>4.1 Acid Sulfate Soils</b>	
<p>The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.</p>	<p>While the Planning Proposal applies to certain lands contained on LEP Acid Sulfate Soils Planning Maps, the existing provisions adequately regulate works and are consistent with the Acid Sulfate Soils Planning Guidelines.</p>
<b>4.3 Flood Prone Land</b>	
<p>The objectives of this direction are:</p> <p>(a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and</p> <p>(b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.</p>	<p>While the Planning Proposal applies to certain lands identified as Flood Prone Land, the existing provisions adequately regulate works and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005. The Planning Proposal particularly responds to likely impacts arising from the application of the Low Rise Medium Density Code in relation to Warriewood Valley which has strict controls on water management as it is highly flood prone and adjacent to the Endangered Environmental Community of the Warriewood Wetlands. The impervious fraction ('built upon' area) identified as part of the modelling undertaken by Council for</p>



	water cycle management stipulates 50% site coverage/landscaped area for a Sector. Water management facilities have been and will be designed and constructed in accordance with this requirement. However the Code allows for no landscaped area for some dual occupancies, based on lot size. This will result in additional run-off and impacts on water quality as the water management facilities were not designed to deal with the additional flows.
<b>4.4 Planning for Bushfire Protection</b>	
The objectives of this direction are: (a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and (b) to encourage sound management of bush fire prone areas.	Appropriate considerations are made of land mapped as bushfire prone land.
<b>6. Local Plan Making</b>	
<b>6.1 Approval and Referral Requirements</b>	
The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	The Planning Proposal is consistent with the terms of this direction as follows: a) provisions that require the concurrence, consultation or referral of DAs to a Minister or public authority are minimised (b) no provisions are contained in the Planning Proposal requiring concurrence, consultation or referral of a Minister or public authority. (c) no development is identified as designated development.
<b>6.2 Reserving Land for Public Purposes</b>	
The objectives of this direction are: (a) to facilitate the provision of public services and facilities by reserving land for public purposes, and (b) to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.	The Planning Proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.
<b>6.3 Site Specific Provisions</b>	
The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.	The Planning Proposal contains no site-specific planning controls
<b>7 Metropolitan Planning</b>	
<b>7.1 Implementation of A Plan for Growing Sydney</b>	
The objective of this direction is to give legal effect to the planning principles; directions; and priorities for subregions, strategic centres and transport gateways contained in A Plan for Growing Sydney.	The Planning Proposal is consistent with the NSW Government's "A Plan for Growing Sydney" published in December 2014.

**Section C – Environmental, social and economic impact****7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

No. The Planning Proposal continues to provide appropriate protections for residential land comprising the habitat of endangered species (clause 36A) and of threatened species (clause 36B).

**8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

The Planning Proposal will ensure environmental impacts are addressed arising from the delivery of the Low Rise Density Code as addressed, or intended to be addressed as detailed in this Planning Proposal.

**9. Has the Planning Proposal adequately addressed any social and economic effects?**

The Planning Proposal will ensure social and economic effects are addressed arising from the delivery of the Low Rise Density Code as detailed in this Planning Proposal.

**Section D – State and Commonwealth interests****10. Is there adequate public infrastructure for the planning proposal?**

Yes

**11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?**

The Planning Proposal is in accordance with consultations with the Department of Environment and Planning as detailed in this Planning Proposal. Consultation will occur in accordance with the requirements of any Gateway approval.

## **Part 4 – Maps**

There are no maps associated with the Planning Proposal



## Part 5 – Community Consultation

Council will place the planning proposal on public exhibition in accordance with future Gateway Determination and consistent with Council's Community Engagement Policy including:

- A public notice in the Manly Daily notifying of the public exhibition;
- Letters to key stakeholders;
- Hard copies of the exhibition material at Council's offices; and
- Electronic copies of the exhibition material on Council's website.

The Gateway determination will confirm the public consultation that must be undertaken.

## Part 6 – Project Timeline

<b>Task</b>	<b>Anticipated timeframe</b>
Referral to Department of Planning & Environment for Gateway determination	June 2018
Issue of Gateway determination	September 2018
Government agency consultation (if required)	October 2018
Public exhibition period	February 2019
Consideration of submissions	March 2019
Report to Council to determine Planning Proposal	May 2019
Submit Planning Proposal to the Department of Planning & Environment for determination	Published by 1 July 2019

## Attachment 1 – Ministerial directions

Directions		Applicable	Consistent
<b>1</b>	<b>Employment and Resources</b>		
1.1	Business and Industrial Zones	YES	YES
1.2	Rural Zones	NO	N/A
1.3	Mining, Petroleum Production and Extractive Industries	NO	N/A
1.4	Oyster Aquaculture	NO	N/A
1.5	Rural Lands	NO	N/A
<b>2</b>	<b>Environment and Heritage</b>		
2.1	Environment Protection Zones	YES	YES
2.2	Coastal Protection	YES	YES
2.3	Heritage Conservation	YES	YES
2.4	Recreation Vehicle Areas	NO	N/A
2.5	Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEP's	NO	N/A
<b>3</b>	<b>Housing, Infrastructure and Urban Development</b>		
3.1	Residential Zones	NO	N/A
3.2	Caravan Parks and Manufactured Home Estates	NO	N/A
3.3	Home Occupations	NO	N/A
3.4	Integrating Land Use and Transport	NO	N/A
3.5	Development Near Licensed Aerodromes	NO	N/A
3.6	Shooting Ranges	NO	N/A
<b>4</b>	<b>Hazard and Risk</b>		
4.1	Acid Sulfate Soils	YES	YES
4.2	Mine Subsidence and Unstable Land	NO	N/A
4.3	Flood Prone Land	YES	YES
4.4	Planning for Bushfire Protection	YES	YES
<b>5</b>	<b>Regional Planning</b>		
5.1	Implementation of Regional Strategies	NO	N/A
5.2	Sydney Drinking Water Catchments	NO	N/A
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	NO	N/A
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	NO	N/A
5.5	Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked 18 June 2010)	NO	N/A
5.6	Sydney to Canberra Corridor (Revoked 10 July 2008 See amended Direction 5.1)	NO	N/A
5.7	Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	NO	N/A
5.8	Second Sydney Airport: Badgerys Creek	NO	N/A
5.9	North West Rail Link Corridor Strategy	NO	N/A
5.1	Implementation of Regional Plans	NO	N/A
<b>6</b>	<b>Local Plan Making</b>		
6.1	Approval and Referral Requirements	YES	YES
6.2	Reserving Land for Public Purposes	YES	YES
6.3	Site Specific Provisions	YES	YES
<b>7</b>	<b>Metropolitan Planning</b>		
7.1	Implementation of A Plan for Growing Sydney	YES	YES
7.2	Implementation of Greater Macarthur Land Release Investigation	NO	N/A
7.3	Parramatta Road Corridor Urban Transformation Strategy	NO	NO
7.4	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	NO	NO
7.5	Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	NO	NO
7.6	Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	NO	NO



7.7	Implementation of Glenfield to Macarthur Urban Renewal Corridor	NO	NO
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