

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 28 NOVEMBER 2018



Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 28 November 2018
in the Walamai Room, Civic Centre, Dee Why**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Development Determination Panel held 14 November 2018	
3.0	DEVELOPMENT DETERMINATION PANEL REPORTS	5
3.1	Mod2018/0456 - 1 Grandview Grove, Seaforth - Modification of Development Consent DA0523/99 granted for centre based child care centre	5
3.2	DA2018/0797 - 257 Whale Beach Road, Whale Beach - Demolition works and construction of a new dwelling house with car stacker garage, swimming pool, front fencing and associated driveway and landscaping works	54

2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 14 NOVEMBER 2018

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 14 November 2018 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	MOD2018/0456 - 1 GRANDVIEW GROVE, SEAFORTH - MODIFICATION OF DEVELOPMENT CONSENT DA0523/99 GRANTED FOR CENTRE BASED CHILD CARE CENTRE
REPORTING MANAGER	RODNEY PIGGOTT
TRIM FILE REF	2018/736371
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant Development Consent to Mod2018/0456 for Modification of Development Consent DA0523/99 granted for centre based child care centre on land at Lot 211 DP 4889, Lot 1 DP 833365 and Lot 1 DP 445471, 1 Grandview Grove, Seaforth subject to the conditions outlined in the Assessment Report.



APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0456
Responsible Officer:	Benjamin Price
Land to be developed (Address):	Lot 211 DP 4889, 1 Grandview Grove SEAFORTH NSW 2092 Lot 1 DP 833365, 1 Grandview Grove SEAFORTH NSW 2092 Lot 1 DP 445471, 1 Grandview Grove SEAFORTH NSW 2092
Proposed Development:	Modification of Development Consent DA0523/99 granted for centre based child care centre
Zoning:	Manly LEP2013 - Land zoned SP2 Infrastructure Manly LEP2013 - Land zoned SP2 Infrastructure Manly LEP2013 - Land zoned SP2 Infrastructure
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	The Uniting Church IN Australia Property Trust (Nsw)
Applicant:	Northern Beaches Uniting Church
Application lodged:	28/08/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Other
Notified:	05/09/2018 to 23/09/2018
Advertised:	08/09/2018
Submissions Received:	1
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;

MOD2018/0456

Page 1 of 45



- 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.

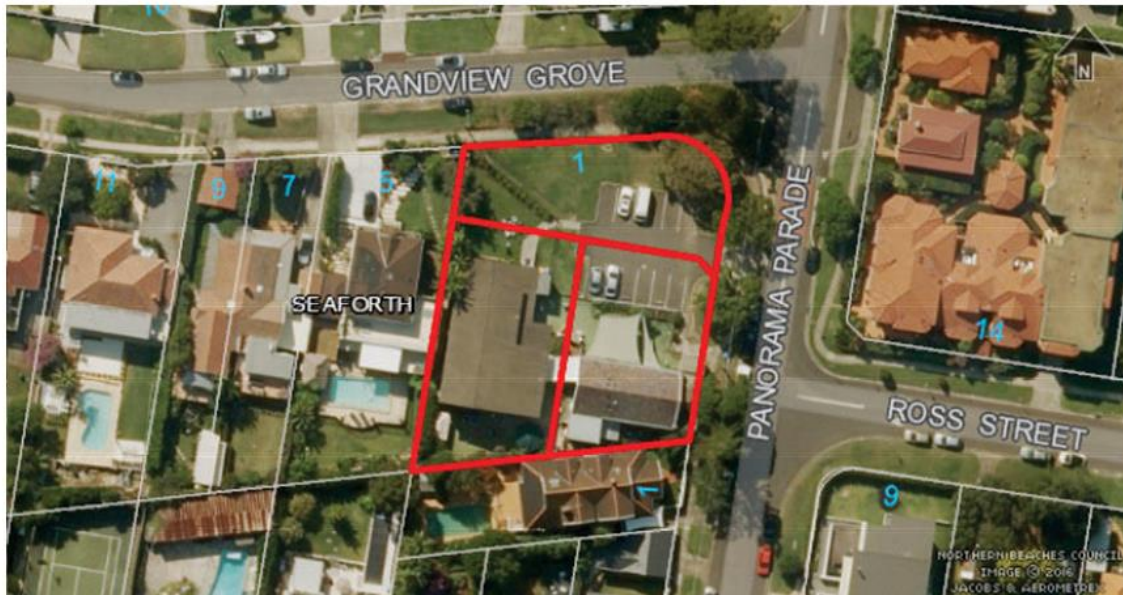
SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	<p>Lot 211 DP 4889 , 1 Grandview Grove SEAFORTH NSW 2092</p> <p>Lot 1 DP 833365 , 1 Grandview Grove SEAFORTH NSW 2092</p> <p>Lot 1 DP 445471 , 1 Grandview Grove SEAFORTH NSW 2092</p>
Detailed Site Description:	<p>The subject site consists of three (3) allotments located on the southern side of Grandview Grove and the western side of Panorama Parade.</p> <p>The site is irregular in shape with a frontage of 28.76m along Grandview Grove and 34.8m along Panorama Parade. The site has a depth of 49.6m from Grandview Grove and 42.145m from Panorama Parade. The site has a surveyed area of 1923.7m².</p> <p>The site is located within the SP2 Place of Public Worship zone and accommodates A one storey church building and a two storey hall building.</p> <p>The site slopes from north to south and includes a cross fall of 4.5m.</p> <p>The site does not contain any significant landscape features or vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one and two storey dwelling houses.</p>

Map:



SITE HISTORY

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

DA523/1999

DA523/1999 - S96(1A) - Part 4 - 56 Children and modified hours of operation of 8.00am to 4.00pm - Approved 2 September 2015

DA523/1999 - S96(2) - Part 3 - modified hours of operation of 8.30am - 3.30pm weekdays. Approved by Delegated Authority of 14 July 2005

DA523/1999 - S96(1) - Part 2 - 56 Children - Approved by the Development Assessment Unit on 23 March 2004

DA523/1999 Pre-school centre extension - 50 Children and approved hours of operation were 9.00am - 3.00pm - Approved Development Control Unit & Land Use Management Committee 17 December 1999.

DA5428/1992 - Pre-School Kindergarten for 29 Children

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes the extension of the existing child care centre into the northern end of the existing hall to accommodate an additional 20 children and an additional outdoor play area. The proposed hours of operation of this area are 8am to 6pm Monday to Friday. The works include the following:

Hall Building

- Minor internal alterations
- Installation of new children's bathroom,
- Replacement of existing double doors that do not meet AS1428.1 with compliant doors to

MOD2018/0456

Page 3 of 45



improve accessibility of the upper level of the building,

Site

- Additional secure outdoor play space to the north of the hall building including shade structure, storage shed, undercroft storage and fence to western side adjacent to car park.
- Pedestrian Pathway

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 DA532/1999, 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 DA523/1999.
(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 DA523/1999 did not require concurrence from the relevant Minister, public authority or approval body.



Section 4.55 (2) - Other Modifications	Comments
(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 Environmental Plan 2013 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 21 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)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p>Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p>Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This Clause is not relevant to this application.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Public Exhibition” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>



EXISTING USE RIGHTS

- Does the existing use satisfy the definition of "existing use" under the Environmental planning and Assessment Act, 1979 (the 'Act')?

Section 106 of the Act defines an existing use as meaning:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered.

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:

The applicant has provided evidence in the form of development consents relating to the site. As demonstrated in Table 1 of the report titled Response to Request For Information in Relation to MOD2018/0456, dated 12 November 2018 and prepared by City Plan Services (The Report) a number of consents relating to the childcare centre have been issued on the site. Further a Construction Certificate for DA523/1999 was issued on 27 January 2000 and it is understood that works commenced shortly after. An Interim Occupation Certificate was issued on the 14 July 2000. The report states that the centre has operated continuously after physical works were completed. Therefore it has been demonstrated that the use commenced prior to the coming into force of Manly Local Environmental Plan 2011 on 5 April 2013.

2. Was the use of the building / land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The use of the building/land was lawfully approved by Council on 17 December 1999, prior to the coming into force of Manly Local Environmental Plan 2013 on 5 April 2013.

3. Has the use of the building/land been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?



Comment:

The applicant has provided evidence in the form of a construction certificate which reveals that the use of the building/land was carried out after 27 January 2000, which is within one year from the date on which the provision having the effect of prohibiting the use commenced.

- **What is “the land on which the existing use was carried out” for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 (“the Regulation”)?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “that if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Comment:

Having regard to the above case law, it is noted that all lots within the site were physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles which should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the court in this case will have general application in dealing with Development Applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

An assessment regarding the sites compliance with the controls has been carried out below. The assessment has found that the proposal is satisfactory with regard to the controls. The developments compliance indicates the compatibility of the development with the existing and likely future context.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor



space ratio, height or parking provision.

Comment:

The use is within the existing building and an outdoor play area with shade structure is proposed. The outdoor shade structure is of a lightweight design and is not of an unreasonable bulk or scale within the locality.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

The impacts on the adjoining land have been assessed below. The assessment has found that the proposed development will not result in any unreasonable impacts on the amenity of the neighbouring properties, subject to compliance with the acoustic report. Suitable conditions have been recommended.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

The new room and outdoor play area will receive good solar access and is designed to maintain appropriate internal amenity.

Conclusion

The use has been approved under a previous EPI (Manly LEP1988) and therefore, is a lawful use. Subsequently, the use can be retained under the current EPI (MLEP 2013).

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
John Graham Wood	10 / 14 Ross Street SEAFORTH NSW 2092

MOD2018/0456

Page 9 of 45



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

- Noise
- Traffic

The matters raised within the submissions are addressed as follows:

- Noise
Comment:
The development was accompanied by an acoustic report that assessed the noise impacts as a result of the modification. The acoustic report included recommendations to ensure the development did not result in any unreasonable acoustic impacts. Furthermore the hours of operation are 8am to 6pm. These hours are not likely to generate unreasonable noise impacts.
- Traffic
Comment:
The proposal was accompanied by a traffic report that demonstrates the capability of the site and surrounding area to accommodate the traffic associated with the use. Councils traffic engineer has reviewed the report and has raised no objection to the development.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>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.</p>
Environmental Health (Industrial)	<p>General Comments</p> <p>The proposal is to include increasing the occupancy number of children by an additional 20 and also an outdoor play area. Unfortunately child care centers are the source of complaints to Council. There are guidelines for dealing with child care noise at design stage.</p> <p>The applicant is referred to Association of Australasian Acoustical Consultants Guideline for Child Care Centre Acoustic Assessment Version 2.0</p> <p>Council will require an acoustic report and recommendations on the proposal as there is an immediate residential receiver next door some</p>



Internal Referral Body	Comments
	<p>6m away.</p> <p>Recommendation</p> <p>REFUSAL at this time.</p> <p>16.10.2018 UPDATE REVIEW The applicant has submitted an Acoustic review of the proposal which makes recommendations to minimize noise to residential receivers. As a result of this noise assessment Environmental Health has no objections to approval subject to conditions.</p>
NECC (Development Engineering)	<p>The application proposed some internal changes and a new outdoor play area on the existing child care facility to accommodate the additional 20 children . It leads a minor impact to the existing on site stormwater management. Development Engineer has no objection to release the modification application. No additional engineering condition is required.</p>
Traffic Engineer	<p>The revised Traffic Report prepared by the applicant's consultant has satisfactorily addressed Council's concerns regarding Traffic and Parking raised previously.</p> <p>To ensure compliance with the intent of the parking arrangements, the remaining 3 parking spaces (those not allocated to staff) shall be signposted as drop-off/pick-up zones including a 5 minute parking restriction to allow appropriate turnover of parents dropping off their children.</p> <p>To ensure safety, especially for those using the footpaths to and from the centre, the applicant will be required to ensure all footpaths and access points are reconstructed, where necessary, to provide sufficient paths of travel. this will include, but not be limited to; removal of trip hazards, etc.</p> <p>As such, Council Traffic Staff raise no objection tot he proposal subject to conditions.</p> <p>Previous Comments: The applicant's SEE identifies that there will be 9 staff onsite. In accordance with the Manly DCP, this will require the provision of 9 parking spaces dedicated to the staff. This leaves 3 car parking spaces within the car park dedicated to the drop off and pick up of students.</p> <p>In accordance with the RMS Guide to Traffic Generating Developments, the applicant would be expected to provide a total of 19 parking spaces. The applicant has identified that the site will continue to provide 12 parking spaces. This leads to a deficit of 7 spaces. They have stated that there is parking available on-street.</p>



Internal Referral Body	Comments
	<p>Consideration could be given to a reduction in car parking onsite, provided on-street parking was safe and accessible (i.e. indented bays) and that the use of such parking would not adversely impact the amenity of the adjacent area.</p> <p>The applicant has not addressed these criteria in their Parking Assessment.</p> <p>Based on the above, the Traffic Team raise concern regarding the shortfall of parking and hence are unable to support the application in its current form.</p>
Waste Officer	The Waste Officer raised no objections subject to conditions of consent

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 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.

As previously outlined this application is for the modification of a consent that includes the establishment of an additional room within a centre-based child-care facility.

As per the provisions of Clause 23, the provisions of the SEPP and the *Child Care Planning Guideline* are applicable.

MOD2018/0456

Page 12 of 45



DESIGN QUALITY PRINCIPLES

Principle 1: Context

Good design responds and contributes to its context, including 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.

Well-designed child care facilities respond to and enhance the qualities and identity of the area including adjacent sites, streetscapes and neighbourhood.

Well-designed child care facilities take advantage of its context by optimising nearby transport, public facilities and centres, respecting local heritage, and being responsive to the demographic, cultural and socio-economic make-up of the facility user's and surrounding communities.

Comment:

The subject site is an existing child care facility that is compatible with the surrounding land uses and not subject to significant environmental constraints.

The modification will utilise the existing hall for the interior spaces and land forward of the hall for the exterior spaces. These spaces are suitable for the use. The development includes a storage shed that is setback 3m from the street front boundary, which is non-compliant with the 6m requirement. No elevations were provided of this element. Given the open character of the streetscape the proposed storage shed is likely to result in an unacceptable impact on the streetscape of the locality. Furthermore there is sufficient area available for the storage shed that is compliant with the front setback and will not result in the impacts of the current proposal. A condition of consent is recommended to delete the storage shed. Subject to the condition of consent the development will maintain the existing open space character of the existing street frontage.

The local roads that service the site have been demonstrated to be adequate to accommodate the use.

Principle 2: Built Form

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

Good design 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. Good design also uses a variety of materials, colours and textures.

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.

Contemporary facility design can be distinctive and unique to support innovative approaches to teaching and learning, while still achieving a visual appearance that is aesthetically pleasing, complements the surrounding areas, and contributes positively to the public realm.

Comment:

The proposed development will use the existing hall building and includes a the construction of a shade structure. The development will maintain an appropriate built form within the locality and will not result in a scale, bulk or height that is inconsistent with the locality.



The development will maintain good front setbacks and an open landscaped frontage to the site. The landscaping and front fencing will clearly define the public and private domains while maintaining the streetscape character of the locality.

Principle 3: Adaptive Learning Spaces

Good facility design delivers high quality learning spaces and achieves a high level of amenity for children and staff, resulting in buildings and associated infrastructure that are fit-for-purpose, enjoyable and easy to use. This is achieved through site layout, building design, and learning spaces fit-out.

Good design achieves a mix of inclusive learning spaces to cater for all students and different modes of learning. This includes appropriately designed physical spaces offering a variety of settings, technology and opportunities for interaction.

Comment:

The additional room provides good learning spaces and will ensure a high level of amenity for children and staff. The learning spaces are of a sufficient size to allow for a variety of activities to be undertaken to cater for different modes of learning.

Principle 4: Sustainability

Sustainable design combines positive environmental, social and economic outcomes.

This includes use of natural cross ventilation, sunlight and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and re-use of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

Well-designed facilities are durable and embed resource efficiency into building and site design, resulting in less energy and water consumption, less generation of waste and air emissions and reduced operational costs.

Comment:

The additional room and outdoor spaces will achieve good solar access. The acoustic report submitted with the application requires all windows and doors to remain shut. This is required to limit acoustic impacts within the locality. Compliance with the BCA will ensure the room is suitably ventilated while maintaining the amenity of the locality.

The proposal includes the re-use of the existing facilities on the site. The proposal is a sustainable approach that will create positive environmental, social and economic outcomes within the area.

Principle 5: Landscape

Landscape and buildings should operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Well-designed landscapes make outdoor spaces assets for learning. This includes designing for diversity in function and use, age-appropriateness and amenity.

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.

Comment:

The modifications will maintain the existing landscaping on the site. The landscaping is suitable within the streetscape and neighbourhood.

The landscaping includes screening to the fences to soften their appearance and provide a natural environment within the outdoor play areas. The existing landscaping is suitable for the purposes of this modification.

Principle 6: Amenity

Good design positively influences internal and external amenity for children, staff and neighbours. Achieving good amenity contributes to positive learning environments and the well-being of students and staff.

Good amenity combines appropriate and efficient indoor and outdoor learning spaces, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, service areas and ease of access for all age groups and degrees of mobility.

Well-designed child care facilities provide comfortable, diverse and attractive spaces to learn, play and socialise.

Comment:

The development predominantly utilises the existing building and will not result in any unreasonable impacts on the solar access or views of the neighbouring properties. The windows within the existing hall building are high level and do not result in overlooking. The acoustic report submitted with the application provides recommendations to ensure no unreasonable impacts on the acoustic privacy. The proposed modifications will maintain the amenity of the neighbouring properties.

The indoor learning spaces will receive good solar access and an outlook over the subject site to the east. The outdoor area is to the north of the building and the proposal includes a shade structure. This will ensure the play area has good access to sunlight and shade at all times. The new room and outdoor area both have adequate storage and good accessibility. The acoustic report submitted requires windows and doors to be closed. As such natural ventilation will not be available. Compliance with the Building Code of Australia will ensure the new room is suitably ventilated. The design of the development will ensure the indoor and outdoor space achieve good amenity.

The design of the proposed development will provide comfortable, diverse and attractive spaces to learn play and socialise.

Principle 7: Safety

Well-designed child care facilities optimise the use of the built and natural environment for learning and play, while utilising equipment, vegetation and landscaping that has a low health and safety risk, and can be checked and maintained efficiently and appropriately.

Good child care facility design balances safety and security with the need to create a welcoming and accessible environment. It provides for quality public and private spaces that are inviting, clearly defined and allow controlled access for members of the community. Well-designed child care facilities incorporate passive surveillance and Crime Prevention Through Environmental Design (CPTED).



Comment:

The proposal includes the use of the existing and some additional fencing to clearly delineate the child care facility and control access to the facility. It also includes landscaping to the fencing to soften their impact from the streetscape. The entrance to the new room is overlooked from the other childcare rooms on the site ensuring passive surveillance of those people entering and leaving the facility. Furthermore the increased presence of people on the site will create further passive surveillance of the streetscape.

The proposed development is of a suitable design to ensure the safety of people and encourage passive surveillance of the neighbourhood.

The following table is an assessment against the criteria of the 'Child Care Planning Guideline' as required by State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017.

MATTERS FOR CONSIDERATION

Objectives	Criteria/Guidelines	Comments
3.1 Site selection and location		
C1 To ensure that appropriate zone considerations are assessed when selecting a site	For proposed developments in or adjacent to a residential zone, consider: <ul style="list-style-type: none"> • the acoustic and privacy impacts of the proposed development on the residential properties • the setbacks and siting of buildings within the residential context • traffic and parking impacts of the proposal on residential amenity. 	<p>An acoustic report was submitted with the application that demonstrated the operation of the premises could be carried out without unreasonable privacy impacts within the locality. Councils Environmental Health Officers have reviewed the development and have raised no objections, with regard to acoustic impacts.</p> <p>The additional children will be accommodated within the existing building and an additional outdoor play area will be provided within the Grandview Grove Frontage. The siting of the development is suitable for the locality and will maintain the character of the area.</p> <p>The application was accompanied by a traffic report that demonstrated the ability of the site and area to accommodate the associated impacts on parking and traffic. The report was reviewed by Councils Traffic Engineer. No objections were raised.</p>



<p>C2 To ensure that the site selected for a proposed child care facility is suitable for the use</p>	<p>When selecting a site, ensure that:</p> <ul style="list-style-type: none"> • the location and surrounding uses are compatible with the proposed development or use • the site is environmentally safe including risks such as flooding, land slip, bushfires, coastal hazards • there are no potential environmental contaminants on the land, in the building or the general proximity, and whether hazardous materials remediation is needed • the characteristics of the site are suitable for the scale and type of development proposed having regard to: <ul style="list-style-type: none"> - size of street frontage, lot configuration, dimensions and overall size - number of shared boundaries with residential properties - the development will not have adverse environmental impacts on the surrounding area, particularly in sensitive environmental or cultural areas • where the proposal is to occupy or retrofit an existing premises, the interior and exterior spaces are suitable for the proposed use • there are suitable drop off and pick up areas, and off and on street parking • the type of adjoining road (for example classified, arterial, local road, cul-de-sac) is appropriate and safe for the proposed use • it is not located closely to incompatible social activities and uses such as restricted premises, injecting rooms, drug clinics and the like, premises licensed for alcohol or gambling such as hotels, clubs, cellar door premises and sex services premises. 	<p>The subject site is an existing child care facility that is compatible with the surrounding land uses and not subject to significant environmental constraints.</p> <p>The modification will utilise the existing hall for the interior spaces and land forward of the hall for the exterior spaces. These spaces are suitable for the use.</p> <p>The development includes a storage shed that is setback 3m setback from the street front boundary, which is non-compliant with the 6m requirement. No elevations were provided of this element. Given the open character of the streetscape the proposed storage shed is likely to result in an unacceptable impact on the streetscape of the locality. A condition of consent is recommended to delete the storage shed. Subject to the condition of consent the development will maintain the existing open space character of the existing street frontage.</p> <p>The local roads that service the site have been demonstrated to be adequate to accommodate the use.</p> <p>There are no incompatible social activities nearby the facility.</p>
<p>C3 To ensure that sites for child care facilities are appropriately located</p>	<p>A child care facility should be located:</p> <ul style="list-style-type: none"> • near compatible social uses such as schools and other educational establishments, parks and other public open space, community facilities, places of public worship • near or within employment areas, town centres, business centres, shops 	<p>The existing childcare facility is located in close proximity to the Seaforth Local Centre and the associated employment and public transport opportunities with this area. The existing site is appropriately located within</p>

MOD2018/0456

Page 17 of 45

	<ul style="list-style-type: none"> • with access to public transport including rail, buses, ferries • in areas with pedestrian connectivity to the local community, businesses, shops, services and the like. 	the locality.
C4 To ensure that sites for child care facilities do not incur risks from environmental, health or safety hazard	<p>A child care facility should be located to avoid risks to children, staff or visitors and adverse environmental conditions arising from:</p> <ul style="list-style-type: none"> • proximity to: <ul style="list-style-type: none"> - heavy or hazardous industry, waste transfer depots or landfill sites - LPG tanks or service stations - water cooling and water warming systems - odour (and other air pollutant) generating uses and sources or sites which, due to prevailing land use zoning, may in future accommodate noise or odour generating uses 	The site is not located in close proximity to any uses the would create adverse environmental conditions.
3.2 Local character, streetscape and the public domain		
C5 To ensure that the child care facility is compatible with the local character and surrounding streetscape	<p>The proposed development should:</p> <ul style="list-style-type: none"> • contribute to the local area by being designed in character with the locality and existing streetscape • reflect the predominant form of surrounding land uses, particularly in low density residential areas • recognise predominant streetscape qualities, such as building form, scale, materials and colours • include design and architectural treatments that respond to and integrate with the existing streetscape • use landscaping to positively contribute to the streetscape and neighbouring amenity • integrate car parking into the building and site landscaping design in residential areas. 	<p>The proposal will utilise the existing building and will maintain the open landscaped character of the streetscape.</p> <p>The associated parking is existing and no further parking area is required on the site.</p> <p>The proposed modification will maintain the sites consistency with the local character and surrounding streetscape.</p>
C6, C7, C8 To ensure clear delineation between the child care facility and public spaces	<p>Create a threshold with a clear transition between public and private realms, including:</p> <ul style="list-style-type: none"> • fencing to ensure safety for children entering and leaving the facility • windows facing from the facility towards the public domain to provide passive surveillance to the street as a safety measure and connection between the facility and the community • integrating existing and proposed landscaping with fencing. <p>On sites with multiple buildings and/or entries, pedestrian entries and spaces associated with the child care facility should</p>	<p>The child care facility is clearly delineated through the use of landscaping and fencing. The development will maintain the sites passive surveillance of the streetscape.</p> <p>The development will provide a clear pedestrian entry into the facility from the car park.</p>

	be differentiated to improve legibility for visitors and children by changes in materials, plant species and colours.	
	Where development adjoins public parks, open space or bushland, the facility should provide an appealing streetscape frontage by adopting some of the following design solutions: • clearly defined street access, pedestrian paths and building entries • low fences and planting which delineate communal/ private open space from adjoining public open space • minimal use of blank walls and high fences.	N/A
C9, C10 To ensure that front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain.	Front fences and walls within the front setback should be constructed of visually permeable materials and treatments. Where the site is listed as a heritage item, adjacent to a heritage item or within a conservation area front fencing should be designed in accordance with local heritage provisions.	The existing fencing is setback from the street frontage and provides suitable transparency. Landscaping is also provided to this fence to soften any impacts.
	High solid acoustic fencing may be used when shielding the facility from noise on classified roads. The walls should be setback from the property boundary with screen landscaping of a similar height between the wall and the boundary	N/A
3.3 Building orientation, envelope and design		
C11 To respond to the streetscape and site, while optimising solar access and opportunities for shade	<p>Orient a development on a site and design the building layout to:</p> <ul style="list-style-type: none"> • ensure visual privacy and minimise potential noise and overlooking impacts on neighbours by: <ul style="list-style-type: none"> - facing doors and windows away from private open space, living rooms and bedrooms in adjoining residential properties - placing play equipment away from common boundaries with residential properties - locating outdoor play areas away from residential dwellings and other sensitive uses • optimise solar access to internal and external play areas • avoid overshadowing of adjoining residential properties • minimise cut and fill • ensure buildings along the street frontage define the street by facing it • ensure that where a child care facility is located above ground level, outdoor play areas are protected from wind and other 	<p>The additional play room is within the existing north facing hall building and the outdoor spaces are north of this building. As such these spaces will receive adequate solar access.</p> <p>The outdoor space is located forward of the neighbouring residential property and is not likely to generate significant acoustic privacy impacts on the living rooms of this property.</p>



	climatic conditions.	
C12 To ensure that the scale of the child care facility is compatible with adjoining development and the impact on adjoining buildings is minimised	<p>The following matters may be considered to minimise the impacts of the proposal on local character:</p> <ul style="list-style-type: none"> • building height should be consistent with other buildings in the locality • building height should respond to the scale and character of the street • setbacks should allow for adequate privacy for neighbours and children at the proposed child care facility • setbacks should provide adequate access for building maintenance • setbacks to the street should be consistent with the existing character. 	<p>The proposal will utilise the existing hall building. This building is suitably designed within the streetscape.</p> <p>The outdoor play area includes a new shade structure. This structure is lightweight and setback from the side and front boundaries. The shade structure will maintain the amenity and streetscape character of the locality while providing amenity to the outdoor play area.</p>
C13, C14 To ensure that setbacks from the boundary of a child care facility are consistent with the predominant development within the immediate context	<p>Where there are no prevailing setback controls minimum setback to a classified road should be 10 metres. On other road frontages where there are existing buildings within 50 metres, the setback should be the average of the two closest buildings. Where there are no buildings within 50 metres, the same setback is required for the predominant adjoining land use.</p> <p>On land in a residential zone, side and rear boundary setbacks should observe the prevailing setbacks required for a dwelling house.</p>	<p>The MDCP 2013 requires a 6m front setback within the area. As discussed above the storage shed does not comply with this control. A condition is recommended to delete the storage shed. Subject to the recommended condition the proposal complies with this setback.</p> <p>The proposal will maintain the setbacks of the existing hall building and the shade structure is setback 2.5m from the side boundary. The storage shed has a nil setback to the side boundary and is non-compliant with the Manly DCP 2013. This element is not consistent with the prevailing setbacks of the locality and is recommended to be deleted. The setbacks subject to the recommended conditions of consent will remain consistent with the prevailing setbacks of the locality</p>
C15 To ensure that the built form, articulation and scale of development relates to its context and buildings are well designed to contribute	<p>The built form of the development should contribute to the character of the local area, including how it:</p> <ul style="list-style-type: none"> • respects and responds to its physical context such as adjacent built form, neighbourhood character, streetscape quality and heritage 	<p>The development will maintain the built form on the site, with the exception of the shade structure. The shade structure is lightweight, setback from the street and is not of an unreasonable bulk</p>

MOD2018/0456

Page 20 of 45



<i>to an area's character</i>	<ul style="list-style-type: none"> • contributes to the identity of the place • retains and reinforces existing built form and vegetation where significant • considers heritage within the local neighbourhood including identified heritage items and conservation areas • responds to its natural environment including local landscape setting and climate • contributes to the identity of place. 	and scale within the locality. The proposal is suitably designed to maintain the character of the local area.
C16 To ensure that buildings are designed to create safe environments for all user's	<p>Entry to the facility should be limited to one secure point which is:</p> <ul style="list-style-type: none"> • located to allow ease of access, particularly for pedestrians • directly accessible from the street where possible • directly visible from the street frontage • easily monitored through natural or camera surveillance • not accessed through an outdoor play area. • in a mixed-use development, clearly defined and separate from entrances to other uses in the building. 	<p>The entry to the site is gained from Panorama Parade to the east of the church building . The main entry to the Child Care Centre is within the church building and is clearly visible from the carpark and the pedestrian entry to the site.</p> <p>An entry to the proposed playroom is provided from the carpark and Panorama Parade. This is a result of the existing configuration of the buildings and the inability of the site to provide one entry point to all buildings. The entries are clearly visible from all other areas of the site and are easily monitored through casual surveillance.</p>
C17 To ensure that child care facilities are designed to be accessible by all potential user's	<p>Accessible design can be achieved by:</p> <ul style="list-style-type: none"> • providing accessibility to and within the building in accordance with all relevant legislation • linking all key areas of the site by level or ramped pathways that are accessible to prams and wheelchairs, including between all car parking areas and the main building entry • providing a continuous path of travel to and within the building, including access between the street entry and car parking and main building entrance. Platform lifts should be avoided where possible • minimising ramping by ensuring building entries and ground floors are well located relative to the level of the footpath. <p>NOTE: The National Construction Code, the Discrimination Disability Act 1992 and the Disability (Access to Premises – Buildings)</p>	The playroom and outdoor spaces have level/ramped internal pathways and access. The playroom will allow for a continuous path of travel from the carpark and within the building. As this is an existing building ramping cannot be avoided in this circumstance.



	Standards 2010 set out the requirements for access to buildings for people with disabilities.	
3.4 Landscaping		
C18, C19 To provide landscape design that contributes to the streetscape and amenity	Appropriate planting should be provided along the boundary integrated with fencing. Screen planting should not be included in calculations of unencumbered outdoor space. Use the existing landscape where feasible to provide a high quality landscaped area by: <ul style="list-style-type: none">• reflecting and reinforcing the local context• incorporating natural features of the site, such as trees, rocky outcrops and vegetation communities into landscaping.	Appropriate screen planting is provided along the street front boundary fence.
	Incorporate car parking into the landscape design of the site by: <ul style="list-style-type: none">• planting shade trees in large car parking areas to create a cool outdoor environment and reduce summer heat radiating into buildings• taking into account streetscape, local character and context when siting car parking areas within the front setback• using low level landscaping to soften and screen parking areas.	The existing parking area and the associated landscaping will be maintained on the site.
3.5 Visual and acoustic privacy		
C20, C21 To protect the privacy and security of children attending the facility	Open balconies in mixed use developments should not overlook facilities nor overhang outdoor play spaces.	N/A
	Minimise direct overlooking of indoor rooms and outdoor play spaces from public areas through: <ul style="list-style-type: none">• appropriate site and building layout• suitably locating pathways, windows and doors• permanent screening and landscape design.	The proposed play area is significantly setback from the street and is screened from view through landscape treatment. The indoor room will not be visible from the public areas.
C22 To minimise impacts on privacy of adjoining properties	Minimise direct overlooking of main internal living areas and private open spaces in adjoining developments through: <ul style="list-style-type: none">• appropriate site and building layout• suitable location of pathways, windows and doors• landscape design and screening.	The existing windows in the building have a 1.93m sill height and do not result in any unreasonable overlooking of private open spaces. The outdoor play area is at ground level and will not result in overlooking.
C23, C24 To minimise the impact of child care facilities on the acoustic privacy of	A new development, or development that includes alterations to more than 50 per cent of the existing floor area, and is located adjacent to residential accommodation	The proposed modifications will not result in an increase of the floor area of more than 50 per cent. The acoustic

MOD2018/0456

Page 22 of 45

neighbouring residential developments	<p>should:</p> <ul style="list-style-type: none"> • provide an acoustic fence along any boundary where the adjoining property contains a residential use. (An acoustic fence is one that is a solid, gap free fence). • ensure that mechanical plant or equipment is screened by solid, gap free material and constructed to reduce noise levels e.g. acoustic fence, building, or enclosure. 	<p>report has provided recommendations to ensure the modification does not result in unreasonable acoustic privacy impacts. This report has been included as a consent document.</p>
	<p>A suitably qualified acoustic professional should prepare an acoustic report which will cover the following matters:</p> <ul style="list-style-type: none"> • identify an appropriate noise level for a child care facility located in residential and other zones • determine an appropriate background noise level for outdoor play areas during times they are proposed to be in use • determine the appropriate height of any acoustic fence to enable the noise criteria to be met. 	<p>An acoustic report was submitted with the application. Councils Environmental Health Officer has reviewed the report and is satisfied with the recommendations.</p>
3.6 Noise and air pollution		
C25, C26	<p>Adopt design solutions to minimise the impacts of noise, such as:</p> <ul style="list-style-type: none"> • creating physical separation between buildings and the noise source • orienting the facility perpendicular to the noise source and where possible buffered by other uses • using landscaping to reduce the perception of noise • limiting the number and size of openings facing noise sources • using double or acoustic glazing, acoustic louvres or enclosed balconies (winter gardens) • using materials with mass and/or sound insulation or absorption properties, such as solid balcony balustrades, external screens and soffits • locating cot rooms, sleeping areas and play areas away from external noise sources 	<p>An acoustic report was submitted with the application. Councils Environmental Health Officer has reviewed the report and is satisfied with the recommendations. The development will minimise noise impacts.</p>
	<p>An acoustic report should identify appropriate noise levels for sleeping areas and other non play areas and examine impacts and noise attenuation measures where a child care facility is proposed in any of the following locations:</p> <ul style="list-style-type: none"> • on industrial zoned land • where the ANEF contour is between 20 and 25, consistent with AS 2021 - 2000 • along a railway or mass transit corridor, as 	<p>N/A</p>

	defined by State Environmental Planning Policy (Infrastructure) 2007 <ul style="list-style-type: none"> • on a major or busy road • other land that is impacted by substantial external noise. 	
C27, C28 To ensure air quality is acceptable where child care facilities are proposed close to external sources of air pollution such as major roads and industrial development	Locate child care facilities on sites which avoid or minimise the potential impact of external sources of air pollution such as major roads and industrial development.	N/A
	<p>A suitably qualified air quality professional should prepare an air quality assessment report to demonstrate that proposed child care facilities close to major roads or industrial developments can meet air quality standards in accordance with relevant legislation and guidelines.</p> <p>The air quality assessment report should evaluate design considerations to minimise air pollution such as:</p> <ul style="list-style-type: none"> • creating an appropriate separation distance between the facility and the pollution source. The location of play areas, sleeping areas and outdoor areas should be as far as practicable from the major source of air pollution • using landscaping to act as a filter for air pollution generated by traffic and industry. Landscaping has the added benefit of improving aesthetics and minimising visual intrusion from an adjacent roadway • incorporating ventilation design into the design of the facility. 	N/A
3.7 Hours of operation		
C29, C30 To minimise the impact of the child care facility on the amenity of neighbouring residential developments	Hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays. The hours of operation of the proposed child care facility may be extended if it adjoins or is adjacent to non-residential land uses.	The predominant surrounding land use is residential. The proposed hours of operation are 8am to 6pm Monday to Friday and are consistent with this policy.
	Within mixed use areas or predominantly commercial areas, the hours of operation for each child care facility should be assessed with respect to its compatibility with adjoining and co-located land uses.	The hours of operation are compatible with the nearby uses.
3.8 Traffic, parking and pedestrian circulation		
C31, C32, C33 To provide parking that satisfies the needs of user's and demand	Off street car parking should be provided at the rates for child care facilities specified in a Development Control Plan that applies to the land.	The Manly DCP 2013 requires the provision of 1 space per employee. The centre will include a total of 9

<p><i>generated by the centre</i></p>	<p>Where a Development Control Plan does not specify car parking rates, off street car parking should be provided at the following rates:</p> <p>Within 400 metres of a metropolitan train station:</p> <ul style="list-style-type: none"> • 1 space per 10 children • 1 space per 2 staff. Staff parking may be stack or tandem parking with no more than 2 spaces in each tandem space. <p>In other areas:</p> <ul style="list-style-type: none"> • 1 space per 4 children. <p>A reduction in car parking rates may be considered where:</p> <ul style="list-style-type: none"> • the proposal is an adaptive re-use of a heritage item • the site is in a B8 Metropolitan Zone or other high density business or residential zone • the site is in proximity to high frequency and well connected public transport • the site is co-located or in proximity to other uses where parking is appropriately provided (for example business centres, schools, public open space, car parks) • there is sufficient on street parking available at appropriate times within proximity of the site. 	<p>employees. The existing parking on the site provides 12 parking spaces. The development provides adequate parking on the site. The proposal was supported by a traffic report. Councils traffic engineers reviewed the report and raised no objections, subject to conditions.</p>
<p>C34, C35 To provide vehicle access from the street in a safe</p>	<p>Alternate vehicular access should be provided where child care facilities are on sites fronting:</p>	<p>N/A</p>



<p>environment that does not disrupt traffic flows</p>	<ul style="list-style-type: none"> • a classified road • roads which carry freight traffic or transport dangerous goods or hazardous materials. <p>The alternate access must have regard to:</p> <ul style="list-style-type: none"> • the prevailing traffic conditions • pedestrian and vehicle safety including bicycle movements • the likely impact of the development on traffic. <p>Child care facilities proposed within cul-de-sacs or narrow lanes or roads should ensure that safe access can be provided to and from the site, and to and from the wider locality in times of emergency.</p>	<p>N/A</p>
<p>C36, C37, C38 To provide a safe and connected environment for pedestrians both on and around the site</p>	<p>The following design solutions may be incorporated into a development to help provide a safe pedestrian environment:</p> <ul style="list-style-type: none"> • separate pedestrian access from the car park to the facility • defined pedestrian crossings included within large car parking areas • separate pedestrian and vehicle entries from the street for parents, children and visitors • pedestrian paths that enable two prams to pass each other • delivery and loading areas located away from the main pedestrian access to the building and in clearly designated, separate facilities • in commercial or industrial zones and mixed use developments, the path of travel from the car parking to the centre entrance physically separated from any truck circulation or parking areas • vehicles can enter and leave the site in a forward direction. <p>Mixed use developments should include:</p> <ul style="list-style-type: none"> • driveway access, manoeuvring areas and parking areas for the facility that are separate to parking and manoeuvring areas used by trucks • drop off and pick up zones that are exclusively available for use during the facility's operating hours with spaces clearly marked accordingly, close to the main entrance and preferably at the same floor level. Alternatively, direct access should avoid crossing driveways or manoeuvring areas used by vehicles accessing other parts of the site 	<p>The site provides clear pedestrian access points directly from the street and carpark.</p> <p>The carpark allows for vehicles to enter and leave the site in a forward direction.</p> <p>N/A</p>

	<ul style="list-style-type: none"> • parking that is separate from other uses, located and grouped together and conveniently located near the entrance or access point to the facility. 	
	<p>Car parking design should:</p> <ul style="list-style-type: none"> • include a child safe fence to separate car parking areas from the building entrance and play areas • provide clearly marked accessible parking as close as possible to the primary entrance to the building in accordance with appropriate Australian Standards • include wheelchair and pram accessible parking. 	The proposal complies.

APPLYING THE NATIONAL REGULATIONS TO DEVELOPMENT PROPOSALS

Regulation	Design Guidance	Comments
4.1 Indoor space requirements		
<p>Regulation 107 Education and Care Services National Regulation</p> <p>Every child being educated and cared for within a facility must have a minimum of 3.25m² of unencumbered indoor space. If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP.</p> <p>Unencumbered indoor space excludes any of the following:</p> <ul style="list-style-type: none"> • passageway or thoroughfare (including door swings) used for circulation • toilet and hygiene facilities • nappy changing area or area for preparing bottles • area permanently set <p>MOD2018/0456</p>	<p><i>The proposed development includes at least 3.25 square metres of unencumbered indoor space for each child.</i></p> <p>Verandahs as indoor space For a verandah to be included as unencumbered indoor space, any opening must be able to be fully closed during inclement weather. It can only be counted once and therefore cannot be counted as outdoor space as well as indoor space.</p> <p>Storage Storage areas including joinery units are not to be included in the calculation of indoor space. To achieve a functional unencumbered area free of clutter, storage areas must be considered when designing and calculating the spatial requirements of the facility. It is recommended that a child care facility provide:</p> <ul style="list-style-type: none"> • a minimum of 0.3m³ per child of external storage space • a minimum of 0.2m³ per child of internal storage space. <p>Storage does not need to be in a separate room or screened, and there should be a mixture of safe shelving and storage that children can access independently.</p>	<p>For this modification, new room 3 is proposed to accommodate 20 children which requires a minimum of 65sqm of unencumbered indoor space. The development will provide 108.4sqm of unencumbered indoor space.</p> <p>The proposal includes storage within new room 3, undercroft storage in the outdoor play area and a large storage room attached to new room 3. There is adequate storage on the site to accommodate the use.</p>



<p>aside for the use or storage of cots</p> <ul style="list-style-type: none"> • area permanently set aside for storage • area or room for staff or administration • kitchens, unless the kitchen is designed to be used predominately by the children as part of an educational program e.g. a learning kitchen • on-site laundry • other space that is not suitable for children. <p>All unencumbered indoor spaces must be provided as a secure area for children. The design of these spaces should consider the safe supervision of children.</p> <p>When calculating indoor space requirements, the area required for any additional child may be waived when the child is being cared for in an emergency circumstance as set out in regulation 123(5) or the child is being educated or cared for in exceptional circumstances as set out in regulation 124(5) and (6) of the National Regulations.</p> <p>Applicants should also note that regulation 81 requires that the needs for sleep and rest of children at the service be met, having regard to their ages, development stages and individual needs.</p> <p>Development applications should</p>	<p>Storage of items such as prams, bikes and scooters should be located adjacent to the building entrance.</p> <p>Where an external laundry service is used, storage and collection points for soiled items should be in an area with separate external access, away from children. This will prevent clothes being carried through public areas and reduce danger to children during drop off and collection of laundry.</p>	
---	---	--

MOD2018/0456

Page 28 of 45



<p>indicate how these needs will be accommodated.</p> <p>Verandahs may be included when calculating indoor space with the written approval from the regulatory authority.</p>		
4.2 Laundry and hygiene facilities		
<p>Regulation 106 Education and Care Services National Regulation</p> <p>There must be laundry facilities or access to laundry facilities; or other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage prior to their disposal or laundering. The laundry and hygienic facilities must be located and maintained in a way that does not pose a risk to children.</p> <p>Child care facilities must also comply with the requirements for laundry facilities that are contained in the National Construction Code.</p>	<p><i>The proposed development includes laundry facilities or access to laundry facilities OR explain the other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage of soiled clothing, nappies and linen prior to their disposal or laundering.</i></p> <p>Laundry and hygiene facilities are a key consideration for education and care service premises. The type of laundry facilities provided must be appropriate to the age of children accommodated.</p> <p>On site laundry On site laundry facilities should contain:</p> <ul style="list-style-type: none"> • a washer or washers capable of dealing with the heavy requirements of the facility • a dryer • laundry sinks • adequate storage for soiled items prior to cleaning • an on site laundry cannot be calculated as usable unencumbered play space for children. <p>External laundry service A facility that does not contain on site laundry facilities must make external laundering arrangements. Any external laundry facility providing services to the facility needs to comply with any relevant Australian Standards.</p>	<p>The applicant advised that all soiled clothes are stored and returned with the child each day. There are storage facilities on the site separate to the child care rooms for the storage of these clothes.</p>
4.3 Toilet and hygiene facilities		
<p>Regulation 109 Education and Care Services National Regulation</p> <p>A service must ensure MOD2018/0456</p>	<p><i>The proposed development includes adequate, developmentally and age appropriate toilet, washing and drying facilities for use by children being educated and cared for by the service.</i></p>	<p>The new room includes children's toilet facilities that are accessible from the outdoor play areas and indoor area. The facilities are designed to allow</p> <p>Page 29 of 45</p>



<p>that adequate, developmentally and age-appropriate toilet, washing and drying facilities are provided for use by children being educated and cared for by the service; and the location and design of the toilet, washing and drying facilities enable safe use and convenient access by the children.</p> <p>Child care facilities must comply with the requirements for sanitary facilities that are contained in the National Construction Code.</p>	<p>Toilet and hygiene facilities should be designed to maintain the amenity and dignity of the occupants. Design considerations could include:</p> <ul style="list-style-type: none"> • junior toilet pans, low level sinks and hand drying facilities for children • a sink and handwashing facilities in all bathrooms for adults • direct access from both activity rooms and outdoor play areas • windows into bathrooms and cubicles without doors to allow supervision by staff • external windows in locations that prevent observation from neighbouring properties or from side boundaries 	<p>supervision.</p>
<p>4.4 Ventilation and natural light</p>		
<p>Regulation 110 Education and Care Services National Regulation</p> <p>Services must be well ventilated, have adequate natural light, and be maintained at a temperature that ensures the safety and wellbeing of children.</p> <p>Child care facilities must comply with the light and ventilation and minimum ceiling height requirements of the <i>National Construction Code</i>. Ceiling height requirements may be affected by the capacity of the facility.</p>	<p><i>The proposed development includes indoor spaces to be used by children that:</i></p> <ul style="list-style-type: none"> • <i>will be well ventilated; and</i> • <i>will have adequate natural light; and</i> • <i>can be maintained at a temperature that ensures the safety and well-being of children.</i> <p>Ventilation</p> <p>Good ventilation can be achieved through a mixture of natural cross ventilation and air conditioning. Encouraging natural ventilation is the basis of sustainable design; however, there will be circumstances where mechanical ventilation will be essential to creating ambient temperatures within a facility.</p> <p>To achieve adequate natural ventilation, the design of the child care facilities must address the orientation of the building, the configuration of rooms and the external building envelope, with natural air flow generally reducing the deeper a building becomes. It is recommended that child care facilities ensure natural ventilation is available to each indoor activity room.</p> <p>Natural light</p>	<p>The playroom has high ceiling heights and windows of multiple orientations. The new room will achieve suitable natural light.</p> <p>The acoustic report submitted with the application requires all windows and doors to remain shut. This is required to limit acoustic impacts within the locality. Compliance with the BCA will ensure the room is suitably ventilated while maintaining the amenity of the locality.</p>

	<p>Solar and daylight access reduces reliance on artificial lighting and heating, improves energy efficiency and creates comfortable learning environments through pleasant conditions. Natural light contributes to a sense of well-being, is important to the development of children and improves service outcomes. Daylight and solar access changes with the time of day, seasons and weather conditions. When designing child care facilities consideration should be given to:</p> <ul style="list-style-type: none"> • providing windows facing different orientations • using skylights as appropriate • ceiling heights. <p>Designers should aim to minimise the need for artificial lighting during the day, especially in circumstances where room depth exceeds ceiling height by 2.5 times. It is recommended that ceiling heights be proportional to the room size, which can be achieved using raked ceilings and exposed trusses, creating a sense of space and visual interest.</p>	
4.5 Administrative space		
<p>Regulation 110 Education and Care Services National Regulation</p> <p>A service must provide adequate area or areas for the purposes of conducting the administrative functions of the service, consulting with parents of children and conducting private conversations.</p>	<p><i>The proposed development includes an adequate area or areas for the purposes of conducting the administrative functions of the service; and consulting with parents of children; and conducting private conversations.</i></p> <p>Design considerations could include closing doors for privacy and glass partitions to ensure supervision.</p> <p>When designing administrative spaces, consideration should be given to functions which can share spaces and those which cannot. Sound proofing of meeting rooms may be appropriate where they are located adjacent to public areas, or in large rooms where sound can easily travel.</p> <p>Administrative spaces should be designed to ensure equitable use by parents and children at the facility. A reception desk may be designed to have a portion of it at a lower level for children or people in a wheel chair.</p>	<p>The site has suitable areas for the conducting of administrative functions.</p>

4.6 Nappy change facilities

<p>Regulation 112 Education and Care Services National Regulations</p> <p>Child care facilities must provide for children who wear nappies, including appropriate hygienic facilities for nappy changing and bathing. All nappy changing facilities should be designed and located in an area that prevents unsupervised access by children.</p> <p>Child care facilities must also comply with the requirements for nappy changing and bathing facilities that are contained in the National Construction Code.</p>	<p><i>(To be completed only if the proposed development is for a service that will care for children who wear nappies).</i></p> <p><i>The proposed development includes an adequate area for construction of appropriate hygienic facilities for nappy changing including at least one properly constructed nappy changing bench and hand cleansing facilities for adults in the immediate vicinity of the nappy change area.</i></p> <p>In circumstances where nappy change facilities must be provided, design considerations could include:</p> <ul style="list-style-type: none"> • properly constructed nappy changing bench or benches • a bench type baby bath within one metre from the nappy change bench • the provision of hand cleansing facilities for adults in the immediate vicinity of the nappy change area • a space to store steps • positioning to enable supervision of the activity and play areas. 	<p>A fold down nappy change facility is accommodated within the new bathroom of the new room. The applicant has advised that the room is intended to be used for pre-school aged children and the nappy change facility is precautionary. It is not intended that this room be used by children who require nappy changing.</p>
---	--	---

4.7 Premises designed to facilitate supervision

<p>Regulation 115 Education and Care Services National Regulations</p> <p>A centre-based service must ensure that the rooms and facilities within the premises (including toilets, nappy change facilities, indoor and outdoor activity rooms and play spaces) are designed to facilitate supervision of children at all times, having regard to the need to maintain their rights and dignity.</p> <p>Child care facilities must also comply with any requirements regarding the ability to facilitate</p>	<p><i>The proposed development (including toilets and nappy change facilities) are designed in a way that facilitates supervision of children at all times, having regard to the need to maintain the rights and dignity of the children.</i></p> <p>Design considerations should include:</p> <ul style="list-style-type: none"> • solid walls in children's toilet cubicles (but no doors) to provide dignity whilst enabling supervision • locating windows into bathrooms or nappy change areas away from view of visitors to the facility, the public or neighbouring properties • avoiding room layouts with hidden corners where supervision is poor, or multi room activity rooms for single groups of children • avoiding multi-level rooms which compromise, or require additional staffing, to ensure proper supervision. If multilevel spaces are proposed, consideration should be given to providing areas that can be closed off and used only under supervision 	<p>The new room is open and easily supervised. The toilet facilities allow for supervision while maintaining the dignity of the children.</p>
--	--	---



supervision that are contained in the National Construction Code.	for controlled activities	
4.8 Emergency and evacuation procedures		
<p>Regulations 97 and 168 Education and Care Services National Regulations</p> <p>Regulation 168 sets out the list of procedures that a care service must have, including procedures for emergency and evacuation.</p> <p>Regulation 97 sets out the detail for what those procedures must cover including:</p> <ul style="list-style-type: none"> • instructions for what must be done in the event of an emergency • an emergency and evacuation floor plan, a copy of which is displayed in a prominent position near each exit • a risk assessment to identify potential emergencies that are relevant to the service. 	<p>Facility design and features should provide for the safe and managed evacuation of children and staff from the facility in the event of a fire or other emergency.</p> <p>Multi-storey buildings with proposed child care facilities above ground level may consider providing additional measures to protect staff and children. For example:</p> <ul style="list-style-type: none"> • independent emergency escape routes from the facility to the ground level that would separate children from other building user's to address child protection concerns during evacuations • a safe haven or separate emergency area where children and staff can muster during the initial stages of a fire alert or other emergency. This would enable staff to account for all children prior to evacuation. <p>An emergency and evaluation plan should be submitted with a DA and should consider:</p> <ul style="list-style-type: none"> • the mobility of children and how this is to be accommodated during an evacuation • the location of a safe congregation/assembly point, away from the evacuated building, busy roads and other hazards, and away from evacuation points used by other occupants or tenants of the same building or of surrounding buildings • how children will be supervised during the evacuation and at the congregation/assembly point, relative to the capacity of the facility and governing child-to-staff ratios. 	<p>The new room has accessible paths of travel and will allow for the safe and managed evacuation of children and staff of the room.</p> <p>An evacuation plan was submitted with the application.</p>
4.9 Outdoor space requirements		
<p>Regulation 108 Education and Care Services National Regulations</p> <p>An education and care service premises must provide for every child being educated and cared for within the facility to have a</p>	<p><i>The proposed development includes at least 7.0 square metres of unencumbered outdoor space for each child.</i></p> <p>Calculating unencumbered space for outdoor areas should not include areas of dense hedges or plantings along boundaries which are designed for landscaping purposes and not for children's play.</p> <p>When new equipment or storage areas are</p>	<p>The proposal complies. The regulation requires 140sqm of unencumbered outdoor space for each child. The development will provide 179sqm of unencumbered outdoor space.</p>

MOD2018/0456

Page 33 of 45



minimum of 7.0m² of unencumbered outdoor space. If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP.

Unencumbered outdoor space excludes any of the following:

- pathway or thoroughfare, except where used by children as part of the education and care program
- car parking area
- storage shed or other storage area
- laundry
- other space that is not suitable for children.

When calculating outdoor space requirements, the area required for any additional child may be waived when the child is being cared for in an emergency circumstance as set out in regulation 123(5) or the child is being educated or cared for in exceptional circumstances as set out in regulation 124(5) and (6) of the National Regulations.

Applicants should also note that regulation 274 (Part 7.3 NSW Provisions) states that a centre-based service for children preschool age or under must ensure there is no swimming pool on the premises, unless the swimming pool existed before 6

added to existing services, the potential impact on unencumbered space calculations and service approvals must be considered.

Verandahs as outdoor space

Where a covered space such as a verandah is to be included in outdoor space it should:

- be open on at least one third of its perimeter
- have a clear height of 2.1 metres
- have a wall height of less than 1.4 metres where a wall with an opening forms the perimeter
- have adequate flooring and roofing
- be designed to provide adequate protection from the elements

Simulated outdoor environments

Proponents should aim to provide the requisite amount of unencumbered outdoor space in all development applications.

A service approval will only be granted in exceptional circumstances when outdoor space requirements are not met. For an exemption to be granted, the preferred alternate solution is that indoor space be designed as a simulated outdoor environment.

Simulated outdoor space must be provided in addition to indoor space and cannot be counted twice when calculating areas.

Simulated outdoor environments are internal spaces that have all the features and experiences and qualities of an outdoor space. They should promote the same learning outcomes that are developed during outdoor play. Simulated outdoor environments should have:

- more access to natural light and ventilation than required for an internal space through large windows, glass doors and panels to enable views of trees, views of the sky and clouds and movement outside the facility
- skylights to give a sense of the external climate
- a combination of different floor types and textures, including wooden decking, pebbles, mounds, ridges, grass, bark and artificial grass, to mimic the uneven surfaces of an outdoor environment

MOD2018/0456

Page 34 of 45

<p>November 1996. Where there is an existing swimming pool, a water safety policy will be required.</p> <p>A verandah that is included within indoor space cannot be included when calculating outdoor space and vice versa.</p>	<ul style="list-style-type: none"> • sand pits and water play areas • furniture made of logs and stepping logs • dense indoor planting and green vegetated walls • climbing frames, walking and/or bike tracks • vegetable gardens and gardening tubs. 	
4.10 Natural Environment		
<p>Regulation 113 Education and Care Services National Regulations</p> <p>The approved provider of a centre-based service must ensure that the outdoor spaces allow children to explore and experience the natural environment.</p>	<p><i>The proposed development includes outdoor spaces that will allow children to explore and experience the natural environment.</i></p> <p>Creating a natural environment to meet this regulation includes the use of natural features such as trees, sand and natural vegetation within the outdoor space.</p> <p>Shrubs and trees selected for the play space must be safe for children. Avoid plant species that risk the health, safety and welfare of the facility's occupants, such as those which:</p> <ul style="list-style-type: none"> • are known to be poisonous, produce toxins or have toxic leaves or berries • have seed pods or stone fruit, attract bees, have thorns, spikes or prickly foliage or drop branches <p>The outdoor space should be designed to:</p> <ul style="list-style-type: none"> • provide a variety of experiences that facilitate the development of cognitive and physical skills, provide opportunities for social interaction and appreciation of the natural environment • assist supervision and minimise opportunities for bullying and antisocial behaviour • enhance outdoor learning, socialisation and recreation by positioning outdoor urban furniture and play equipment in configurations that facilitate interaction. 	<p>The proposal complies with this clause. The outdoor space will allow the children to explore and experience the natural environment.</p>
4.11 Shade		
<p>Regulation 114 Education and Care Services National</p> <p>MOD2018/0456</p>	<p><i>The proposed development includes adequate shaded areas to protect children from overexposure to ultraviolet</i></p>	<p>The development includes the construction of a large shade structure for the</p> <p>Page 35 of 45</p>



<p>Regulations</p> <p>The approved provider of a centre-based service must ensure that outdoor spaces include adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.</p>	<p><i>radiation from the sun.</i></p> <p>Providing the correct balance of sunlight and shade to play areas is important for the health and well-being of children and staff. Combining built and natural shade will often be the best option.</p> <p>Solar access</p> <p>Controlled exposure to daylight for limited periods is essential as sunlight provides vitamin D which promotes healthy muscles, bones and overall well-being. Outdoor play areas should be provided with controlled solar access throughout the year. Outdoor play areas should:</p> <ul style="list-style-type: none"> • have year-round solar access to at least 30 per cent of the ground area, with no more than 60 per cent of the outdoor space covered. • provide shade in the form of trees or built shade structures giving protection from ultraviolet radiation to at least 30 per cent of the outdoor play area • have evenly distributed shade structures over different activity spaces. <p>Natural shade</p> <p>Natural shade should be a major element in outdoor play areas. Trees with dense foliage and wide-spreading canopies provide the best protection. Existing stands of trees, particularly in rear setbacks, should be retained to provide shaded play areas. Species that suit local soil and climatic conditions and the character of the environment are recommended.</p> <p>Dense shrubs can also provide shade. They should be planted around the site perimeter so they don't obstruct supervision. Pruning shrubs on the underside may create shaded play nooks underneath. Planting for shade and solar access is enhanced by:</p> <ul style="list-style-type: none"> • placing appropriately scaled trees near the eastern and western elevations • providing a balance of evergreen and deciduous trees to give shade in summer and sunlight access in winter. <p>Built shade structures</p> <p>Built structures providing effective shade include:</p>	<p>outdoor open space. The shade structure is 39sqm and will provide shade to 21% of the outdoor open space. The development site provides far greater than required outdoor space. If the outdoor space was compliant with the requirement (140sqm) the shade structure would provide shade to 28% of the outdoor space. Given the number of children, the shade structure is considered to provide adequate shaded areas.</p> <p>The site includes shrubs on the front boundary and a planter box to the front of the existing building.</p>
---	---	--

	<ul style="list-style-type: none"> • permanent structures (pergolas, sails and verandahs) • demountable shade (marquees and tents) • adjustable systems (awnings) • shade sails. <p>Shade structures should not create safety hazards. Support systems such as upright posts should be clearly visible with rounded edges or padding. Vertical barriers at the sides of shade structures should be designed to prevent children using them for climbing. Shade structures should allow adults to view and access the children's play areas, with a recommended head clearance of 2.1 metres. The floor area underneath the structure should be of a sufficient size and shape to allow children to gather or play actively.</p>	
4.12 Fencing		
<p>Regulation 104 Education and Care Services National Regulations</p> <p>Any outdoor space used by children must be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.</p> <p>This regulation does not apply to a centre-based service that primarily provides education and care to children over preschool age, including a family day care venue where all children are over preschool age. Child care facilities must also comply with the requirements for fencing and protection of outdoor play spaces that are contained in the National Construction Code</p>	<p><i>Outdoor space that will be used by children will be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.</i></p> <p>Fencing at child care facilities must provide a secure, safe environment for children and minimise access to dangerous areas. Fencing also needs to positively contribute to the visual amenity of the streetscape and surrounding area. In general, fencing around outdoor spaces should:</p> <ul style="list-style-type: none"> • prevent children climbing over, under or through fences • prevent people outside the facility from gaining access by climbing over, under or through the fence • not create a sense of enclosure. <p>Design considerations for side and rear boundary fences could include:</p> <ul style="list-style-type: none"> • being made from solid prefinished metal, timber or masonry • having a minimum height of 1.8 metres • having no rails or elements for climbing higher than 150mm from the ground. <p>Fencing and gates should be designed to ensure adequate sightlines for vehicles and pedestrian safety in accordance with Australian Standards and Roads and Maritime Services Traffic Management</p>	<p>The existing 1.8m western boundary fence will be retained and the internal fencing is designed to match the existing internal fencing. This will ensure that the outdoor space is suitably enclosed.</p> <p>The fencing provides transparency and is softened from the street by the use of landscaping.</p> <p>The fencing on the site will not interrupt site lines for vehicles of pedestrians.</p>



	Guidelines. Gates should be designed to prevent children leaving/entering unsupervised by use of childproof locking systems.	
4.13 Soil Assessment		
<p>Regulation 25 Education and Care Services National Regulations</p> <p>Subclause (d) of regulation 25 requires an assessment of soil at a proposed site, and in some cases, sites already in use for such purposes as part of an application for service approval.</p> <p>With every service application one of the following is required:</p> <ul style="list-style-type: none"> • a soil assessment for the site of the proposed education and care service premises • if a soil assessment for the site of the proposed child care facility has previously been undertaken, a statement to that effect specifying when the soil assessment was undertaken • a statement made by the applicant that states, to the best of the applicant's knowledge, the site history does not indicate that the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children 	<p>To ensure consistency between the development consent and the service approval application, a soil assessment should be undertaken as part of the development application process.</p> <p>Where children will have access to soil the regulatory authority requires a preliminary investigation of the soil. This includes sites with or without buildings and existing approved children's services where:</p> <ul style="list-style-type: none"> • the application is to alter or extend the premises • the alteration or extension requires earthworks or deep excavations (exceeding a depth of one metre) • the works are going to take place in an area used for children's outdoor play or will be used for children's outdoor play after the work is completed • a soil assessment has not been undertaken at the children's service. <p>Minor landscaping, creation of sand pits, movement of play equipment and so on do not qualify as earthworks and do not require a soil assessment.</p> <p>An assessment of soil for a children's service approval application may require three levels of investigation:</p> <ul style="list-style-type: none"> • Stage 1 - Preliminary investigation (with or without soil sampling) • Stage 2 - Detailed site investigation • Stage 3 - Site specific human health risk assessment. 	<p>A statement was submitted by the Uniting Church that states, to the best of their knowledge, the site history does not indicate that the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children.</p>

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 a place of public worship and a centre-based child care facility 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 commercial land use.

Manly Local Environmental Plan 2013

Is the development permissible?	No
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	N/A	3.3m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1923.7sqm	Requirement	Approved	Proposed	Complies
4.1.4.1 Street Front Setbacks	6m	17.5m - 19m	Shade Structure - 8.6m - 10.3m Storage shed 3m	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	1/3 wall height West Hall building - 1.7m - 2.3m Shade Structure - 1m	Hall building No change - 1.5m Shade Structure - N/A	Hall building No change - 1.5m Shade Structure - 2.54m-2.56m	Yes
Schedule 3 Parking and Access	Dwelling 1 space per employee (9) and onsite drop off and pick up points	12 spaces	12 spaces	Yes



Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.3 Landscaping	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.4.6 Child Care Centres	Yes	Yes

Detailed Assessment

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

Description of non-compliance

The proposed storage shed is setback 3m from the front boundary and does not comply with the minimum 6m front setback control 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 maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

The proposed storage shed is not consistent with the predominant building setback of the area and will result in an unreasonable impact on the streetscape character of the locality. As such it is recommended that the storage shed be deleted by a condition of consent. The proposed development subject to the conditions of consent will maintain and enhance the existing streetscape and the desired spatial proportions of the street.

Objective 2) To ensure and enhance local amenity by:

- providing privacy;
- providing equitable access to light, sunshine and air movement; and



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

Comment:

The proposal is of a suitable design to maintain and enhance the amenity of the locality.

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

Comment:

The proposed front setback of the storage shed will result in unreasonable impacts within the locality. The proposed flexibility is not acceptable in this circumstance.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The development will maintain the natural features of the site and accommodate areas for deep soil plantings.

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

Comment:

Not applicable

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

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

MOD2018/0456

Page 41 of 45



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

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

No contributions were applied to the original application. As such no contributions are applicable to this modification.

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. Mod2018/0456 for Modification of Development Consent DA0523/99 granted for centre based child care centre on land at Lot 211 DP 4889,1 Grandview Grove, SEAFORTH, Lot 1 DP 833365,1 Grandview Grove, SEAFORTH, Lot 1 DP 445471,1 Grandview Grove, SEAFORTH, 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
DA01b Proposed Site Plan	15 August 2018	ArchitectEm
DA02b Proposed Floor Plan	15 August 2018	ArchitectEm
DA03b Proposed Elevation and Section	15 August 2018	ArchitectEm

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Proposed Seaforth Kindergarten Centre-based Child Care Service Mod2018/04561 Grandview Grove (also known as 3 Panorama Parade), Seaforth	2 October 2018	Transport and Traffic Planning Associates
3 Panorama Parade, Seaforth - DA Acoustic Service - Revision 1	27 September 2018	Acoustic Logic

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

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

B. Modify Condition 53 to read as follows:

The facilities is to provide for a maximum seventy-six (76) children at any one time with a minimum of six (6) siblings provided for in this total.

C. Add Condition 58- Footpath Construction to read as follows:

The footpath, in accordance to Council's standard specifications, shall be constructed along the property frontage to Council's satisfaction. Detailed civil drawings, prepared by a suitably qualified Civil Engineer, demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Construction Certificate.

Reason: To provide safe pedestrian access to and from the property.

D. Add Condition 59- Amendments to plans to read as follows:

The 'New 3 x 2 shed, on level concrete slab' detailed on the approved plans is to be deleted. Amended plans detailing compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain the streetscape character of the locality.

E. Add Condition 60- Waste/Recycling Requirements (Waste Plan Submitted) to read as

MOD2018/0456

Page 43 of 45

**follows:**

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.

F. Add Condition 61 - Signage and Linemarking to read as follows:

The applicant shall engage a suitably qualified person to prepare plans demonstrating the allocation of parking spaces to staff and the inclusion of 'P 5 minute' restrictions on the 3 parking spaces not allocated to staff parking. This plan shall be submitted to and approved by the Certifying Authority prior to the release of any Occupation Certificate.

Reason: To ensure the compliance of users within the car park and reduce demand on the On-street parking amenity.

G. Add Condition 62 - Public Domain - Footpath Construction to read as follows:

The footpath is to be constructed as per the approved Civil Drawings. The construction is to be completed to Council's satisfaction prior to the release of any Occupation Certificate.

Reason: To ensure safe pedestrian access to the property is achieved prior to services commencing.

H. Add Condition 63 - Waste/Recycling Compliance Documentation to read as follows:

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.

I. Add Condition 64 - Fire Safety Matters to read as follows:

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

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

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

J. Add Condition 65 - Noise Management to read as follows:

1. Compliance with the recommendations of the Acoustic report by Acoustic Logic dated 27.9.2018 including:

MOD2018/0456

Page 44 of 45



All windows/doors to the hall (the new internal play area) must be kept closed during operation of the Centre.

Any new glazing must be minimum 6mm thick glass (Rw 29).

In the event that new air-conditioning plant is installed, plant should be selected and located such that noise emissions compliant with the EPA Noise Policy for Industry.

Management of outdoor play areas must be such that the total number of children outside never exceeds that which occurs under current operation.

Signs reminding staff and visitors to minimise noise at all times shall be installed at ingress/egress points from the child care Centre.

Install a contact phone number at the front of the Centre so that any complaints regarding Centre operation can be made.

Cleaning activities should be undertaken will all façades (windows and doors) should be closed. Any garden care should be undertaken during the operation hours of the facility

2. A Noise Management plan incorporating the above requirements shall kept on site, on going, so that current and future staff can ensure compliance.

NB. Because of the acoustic requirement "All windows/doors to the hall (the new internal play area) must be kept closed during operation of the Centre" air supply arrangements to be compliant with the requirements of the BCA (Building Code of Australia) .

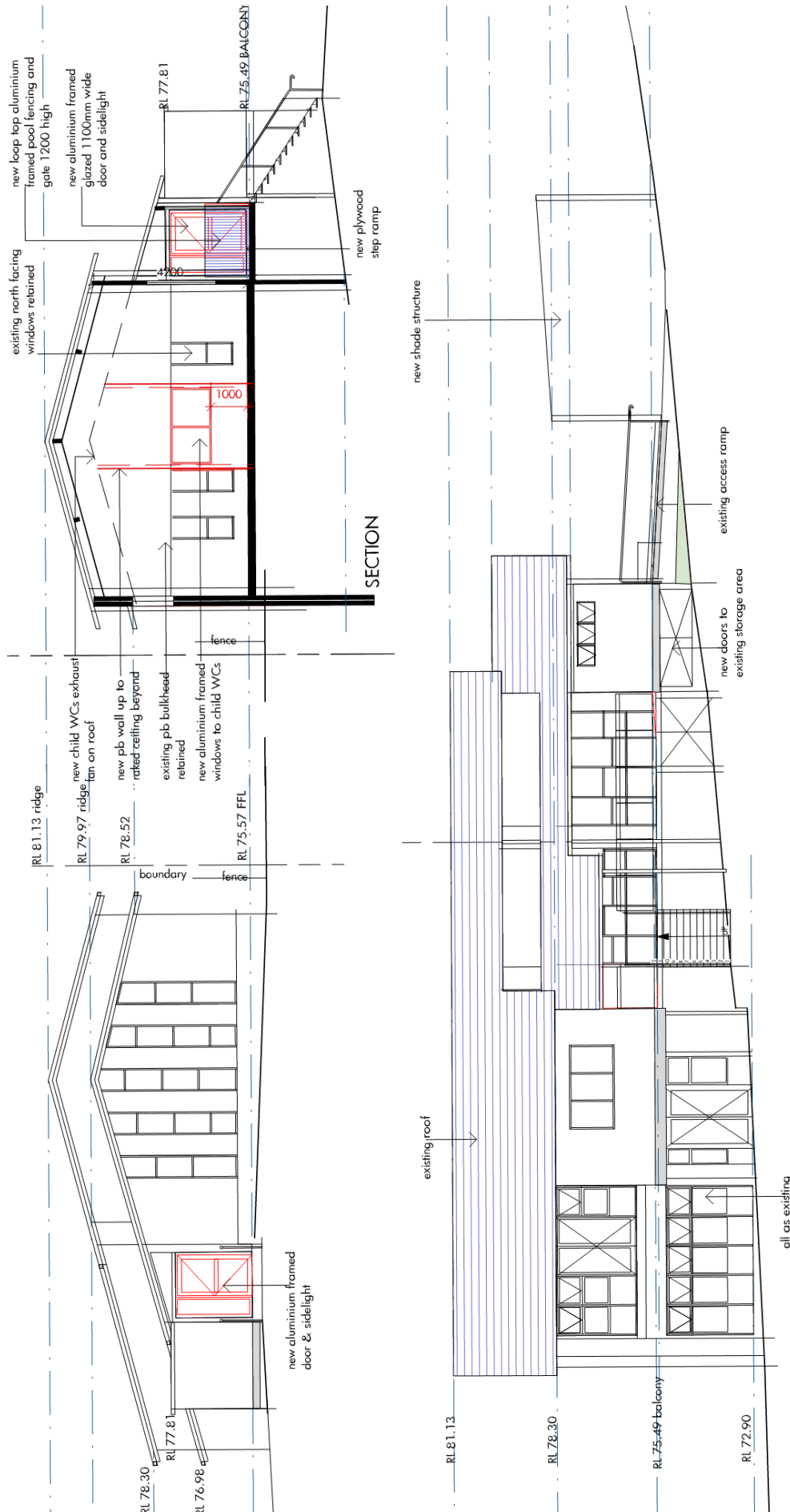
Reason: To avoid noise nuisance and maintain the amenity of the neighboring premises.

K. Add Condition 66 - Hours of Operation to read as follows:

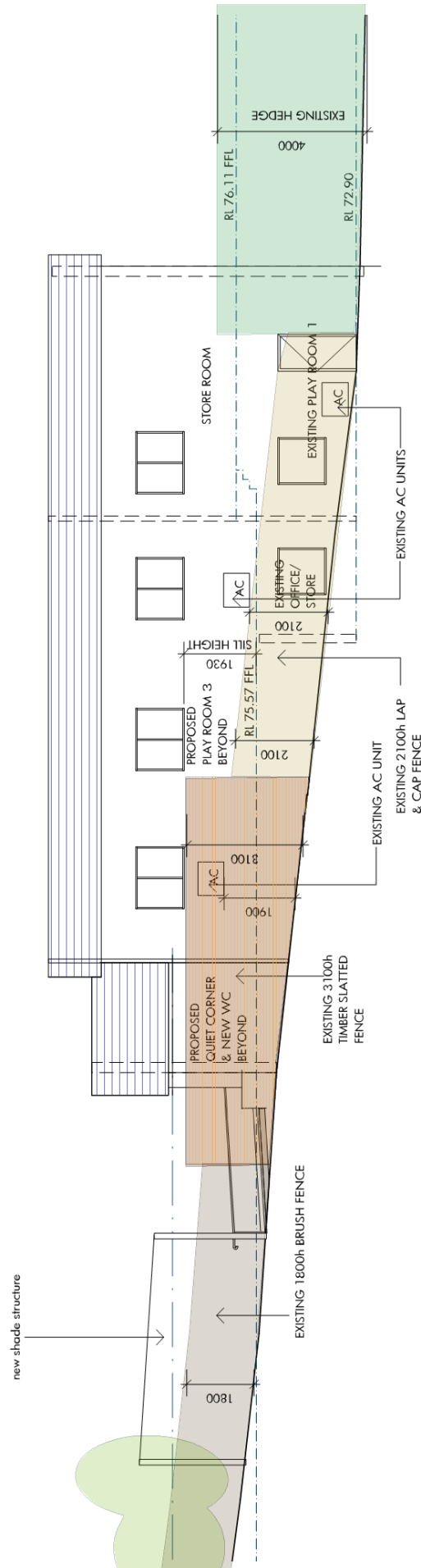
The hours of operation of 'New Room 3' and the associated 'Outdoor Play Area' detailed on the approved plans are to be restricted to:

Monday to Friday – 8am to 6pm

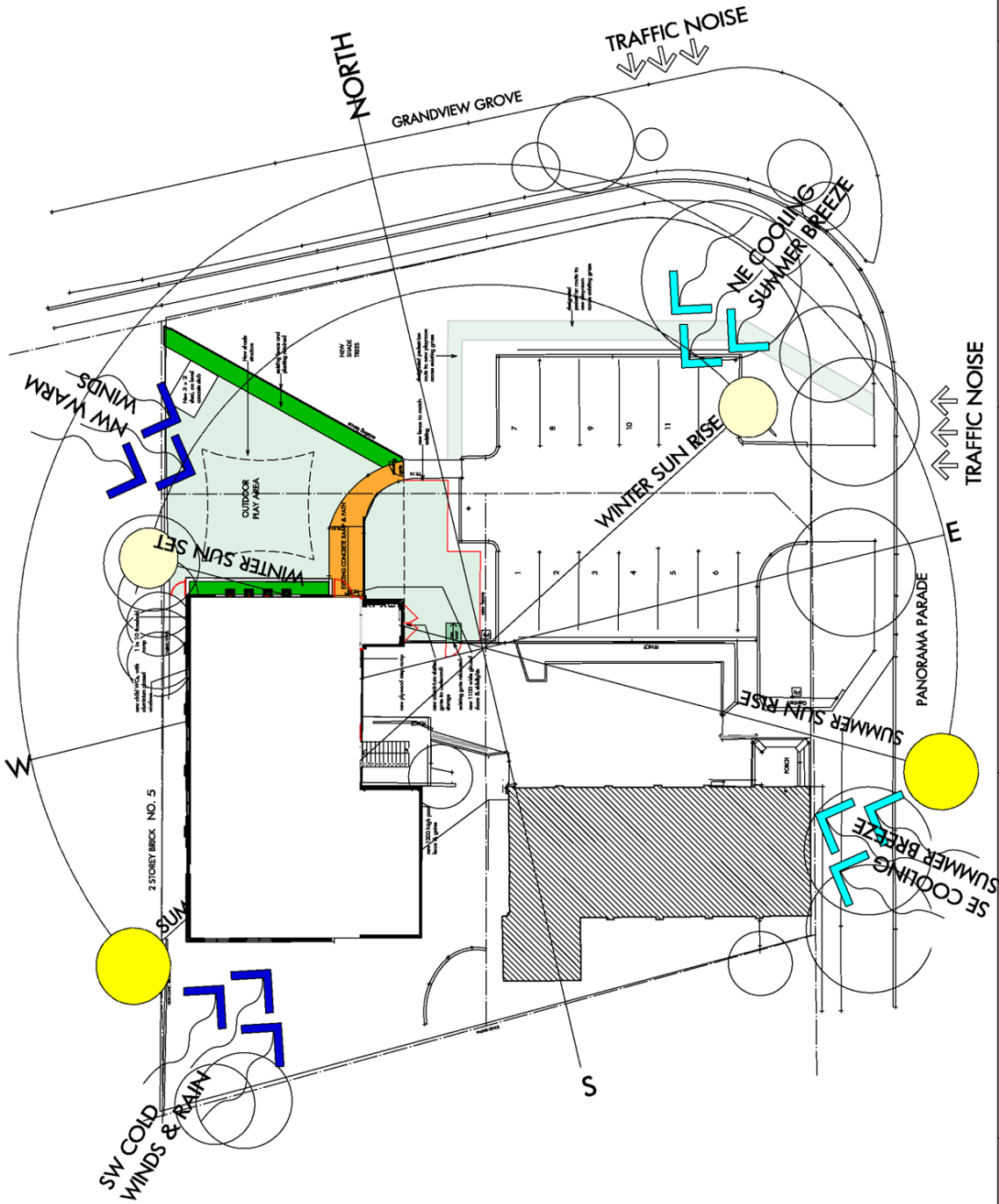
Reason: Information to ensure that amenity of the surrounding locality is maintained.



Project SEAFORTH KINDERGARTEN PANORAMA PARADE SEAFORTH	Drawing PROPOSED ELEVATIONS & SECTION			architectem pty ltd ABN 22139 667 888 1/110 Audley Street, Petersham NSW 2049 PO Box 578 Petersham NSW 2049 T: (02) 9560 9383 M: 0422 947257 E: ewhitworth@architectem.com.au	
	Date 15/08/2018	Client UNITING CHURCH	Drawing by ML		Scale 1:100



Project		SEAFORTH KINDERGARTEN PANORAMA PARADE SEAFORTH			Drawing EXISTING WEST ELEVATION		architectem <small>pty ltd ABN 22 139 667 888</small> 1/110 Audley Street, Petersham NSW 2049 PO Box 578 Petersham NSW 2049 T: (02) 9560 9383 M: 0422 947257 E: ewhitworth@architectem.com.au				
Date	02/10/2018	Client	UNITING CHURCH	Drawn by	ML	Scale	1:100	Job No.	322	Drawing No.	DA07



<p>Project SEAFORTH KINDERGARTEN PANORAMA PARADE SEAFORTH</p>	<p>Drawing SITE ANALYSIS PLAN</p>	<p>architectem pty ltd ABN 221 39 667 888 1/110 Audley Street, Petersham NSW 2049 PO Box 578 Petersham NSW 2049 T: (02) 9560 9383 M: 0422 947257 E: ewhitworth@architectem.com.au</p>			
<p>Date 11/07/2018</p>	<p>Client UNITING CHURCH</p>	<p>Drawn by ML</p>	<p>Scale 1:250</p>	<p>Job No. 322</p>	<p>Drawing No. DA04b</p>

ITEM 3.2	DA2018/0797 - 257 WHALE BEACH ROAD, WHALE BEACH - DEMOLITION WORKS AND CONSTRUCTION OF A NEW DWELLING HOUSE WITH CAR STACKER GARAGE, SWIMMING POOL, FRONT FENCING AND ASSOCIATED DRIVEWAY AND LANDSCAPING WORKS
REPORTING MANAGER	RODNEY PIGGOTT
TRIM FILE REF	2018/736301
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

To refer the attached application for determination as required under adopted delegations of the Charter.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant Development Consent to DA2018/0797 for demolition works and construction of a new dwelling house with car stacker garage, swimming pool, front fencing and associated driveway and landscaping works on land at Lot 171 DP 15376, 257 Whale Beach Road, Whale Beach subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/0797
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 171 DP 15376, 257 Whale Beach Road WHALE BEACH NSW 2107
Proposed Development:	Demolition works and construction of a new dwelling house with car stacker garage, swimming pool, front fencing and associated driveway and landscaping works
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Jennifer Elizabeth Davies
Applicant:	Walter Barda Design Pty Ltd
Application lodged:	16/05/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	23/05/2018 to 08/06/2018
Advertised:	Not Advertised
Submissions Received:	8
Recommendation:	Approval
Estimated Cost of Works:	\$ 3,394,643.00

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

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.12 Waste and Recycling Facilities
Pittwater 21 Development Control Plan - D12.5 Front building line
Pittwater 21 Development Control Plan - D12.6 Side and rear building line
Pittwater 21 Development Control Plan - D12.8 Building envelope
Pittwater 21 Development Control Plan - D12.12 Fences - Flora and Fauna Conservation Areas
Pittwater 21 Development Control Plan - D12.13 Construction, Retaining walls, terracing and undercroft areas

SITE DESCRIPTION

Property Description:	Lot 171 DP 15376 , 257 Whale Beach Road WHALE BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Whale Beach Road, Whale Beach.</p> <p>The site is irregular in shape with a frontage of 15.285m along Whale Beach Road and an average depth of 67.6m. The site has a surveyed area of 1,027m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a two-storey detached dwelling and shed.</p> <p>The site steeply slopes approximately 24m from east to west. The site contains some significant vegetation, including a Norfolk Island Pine (across the common boundary between Nos. 257 and 259 Whale Beach Road), and extends to the dunes of Whale Beach.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by two- and three-storey detached dwellings.</p>

Map:



SITE HISTORY

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks consent for the following works:

- Demolition of existing structures;
- Construction of a four-storey dwelling with double garage and vehicle turntable;
- Construction of a swimming pool; and
- Landscaping works.

On 12 September 2018, Council requested withdrawal of the application, or amended plans addressing the following concerns:

- Inconsistency with the E4 Environmental Living objectives, as the proposal relied on extensive excavation and required removal of a Norfolk Island Pine;
- Inconsistency with the Clause 4.3 Height of Buildings objectives, as the proposal resulted in unreasonable view loss from the public domain, did not sensitively respond to the topography (extensive excavation), and required removal of a Norfolk Island Pine;
- Non-compliance with the front building line resulted in unreasonable view loss to the public domain, due to excessive height of car stacker; and
- Non-compliance with the building envelope resulted in unreasonable view loss to the public domain.

In response, on 27 September 2018, the Applicant submitted amended plans, demonstrating:



- Increased side setbacks to allow for retention of the Norfolk Island Pine and view from public domain;
- Decreased excavation;
- Deletion of the car stacker, subsequent reduction in height and width of the garage structure and use of transparent building materials, resulting in reasonable view sharing from the public domain; and
- Increased front setback.

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	Pittwater 21 Development Control Plan 2014 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p>



Section 4.15 Matters for Consideration'	Comments
	<p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 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) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan 2014 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 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	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 8 submission/s from:



Name:	Address:
BBF Town Planners	1 / 9 Narabang Way BELROSE NSW 2085
Mr Livio Panozzo	PO Box 213 EASTWOOD NSW 2122
Mp Terrence Norman Fern	PO Box N297 GROSVENOR PLACE NSW 1220
Mr Livio Panozzo	226 Whale Beach Road WHALE BEACH NSW 2107
Mrs Maria Pia Panozzo	PO Box 213 EASTWOOD NSW 2122
BBC Consulting Planners	55 Mountain Street BROADWAY NSW 2581
Ms Janet Elizabeth France	5 Tenilba Road NORTHBRIDGE NSW 2063
Mr John Michael Keldoulis	8D/45 Ocean Avenue DOUBLE BAY NSW 2028

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

- Proposal results in unreasonable overshadowing;
- Proposal results in unreasonable privacy impacts;
- Non-compliance with the building envelope and setback controls in the P21 DCP;
- Inconsistency with the objectives of the E4 Environmental Living zone;
- Inconsistency with the desired future character of the Palm Beach Locality in relation to bulk and scale;
- Inconsistency with the objectives of Clause 4.3 Height of Buildings of the Pittwater LEP 2014;
- Proposal unreasonably impacts on the view to the ocean from the street and from Nos. 226, 232 and 234 Whale Beach Road;
- Height poles should be erected;
- Norfolk Island Pine is in good health and should be retained;

The matters raised within the submissions are addressed as follows:

- Overshadowing
Comment:
The proposed development is acceptable in relation to overshadowing for the reasons detailed in the section of this report relating to Clause C1.4 Solar Access of the P21 DCP.
- Privacy
Comment:
The proposed development is acceptable in relation to privacy for the reasons detailed in the section of this report relating to Clause C1.5 Visual Privacy of the P21 DCP.
- DCP Non-Compliance - Building Envelope, Front and Side Building Lines, Palm Beach Locality
Comment:
The proposed development is acceptable in relation to non-compliance with the P21 DCP for the reasons detailed throughout this report.
- LEP Non-Compliance - E4 Zone, Height of Building (incl. Height Pole Request)
Comment:
The proposed development is acceptable in relation to non-compliance with the Pittwater LEP 2014 for the reasons detailed throughout this report. Height poles have been erected by the Applicant. It is not considered necessary to request additional or alternative height poles in this



case.

- View Loss
Comment:
The proposed development is acceptable in relation to view loss for the reasons detailed in the section of this report relating to Clause C1.3 View Sharing of the P21 DCP.
- Loss of Norfolk Island Pine
Comment:
On 27 September 2018, the Applicant provided amended plans, which demonstrate the retention of the Norfolk Island Pine.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The proposal in terms of landscape outcomes is supported following amended design plans to increase the setback of proposed structures from the Norfolk Island Pine located along the northern boundary between 257 and 259 Whale Beach Road, Whale Beach.</p> <p>The following amended documents reflect an acceptable resolution to protect and preserve the Norfolk Island Pine: A2001 - Floor Plans Lower, issue B, prepared by Walter Barda Design, illustrating no intrusion into the structural root zone (SRZ 3500mm) at existing ground level, with a setback of 5000mm to any proposed structure, and a 2225mm setback to the existing trunk at levels above.</p> <p>Council's Landscape section have assessed this application against the following Pittwater DCP21 controls:</p> <p>B4.22 Preservation of Trees and Bushland</p> <p>C1.1 Landscaping</p>
NECC (Bushland and Biodiversity)	Council's Bushland & Biodiversity division has assessed the proposal against Pittwater LEP 2014 Control 7.6 Biodiversity Protection & Pittwater 21 DCP 2014 Control B1.4 Aboriginal Heritage Significance, B4.17 Littoral Rainforest EEC and believes the proposed development complies subject to conditions, as recommended.
NECC (Development Engineering)	The proposed development does not require OSD and the proposed spreader system is acceptable. The proposed new driveway crossing has been assessed and is satisfactory. The submitted Geotechnical

DA2018/0797

Page 7 of 38



Internal Referral Body	Comments
	report addresses the DCP requirements. No objection to approval, subject to conditions as recommended.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed development generally complies with the flood requirements of the LEP and DCP.
Property Management and Commercial	The proposal is for the demolition of the existing dwelling and the construction of a new dwelling. Property have no objection to the proposal as submitted.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 917724S dated 20 April 2018). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

**SEPP (Infrastructure) 2007**Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

The site is subject to State Environmental Planning Policy (Coastal Management) 2018. Accordingly, an assessment under the SEPP has been carried out as follows:

14 Development on land within the coastal use area

(1)

- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
- (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

In response to (a) above -

DA2018/0797

Page 9 of 38



Access to the beach remains unaffected by the proposed development. Overshadowing and view loss are acceptable for the reasons detailed throughout this report. The proposed development will not result in any unreasonable wind funnelling. The proposed development is acceptable in relation to visual amenity and scenic qualities for the reasons detailed throughout this report. Aboriginal heritage is not affected by the proposed development. The site is not heritage listed, nor in a heritage conservation area, nor in the vicinity of a heritage-listed item or heritage conservation area.

In response to (b) above, the proposed development is designed, sited and will be managed so as no to result in any unreasonable impact.

In response to (c) above, the proposal is acceptable in relation to bulk, scale and size in the coastal and built environment context of the site, for the reasons detailed throughout this report.

As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

Pittwater Local Environmental Plan 2014

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:	10m	9.5m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

Clause 4.3(2D) of the PLEP 2014 provides that:

(2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more



than 10.0 metres if:

- (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and
- (b) the objectives of this clause are achieved, and
- (c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and
- (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

Clause 4.3(2D) is addressed as follows:

The portion of the development above the 8.5m maximum building height is minor, being only small corners of the development. The objectives of Clause 4.3 are achieved. The portion of the site being developed has a slope of 20.25 degrees or 36.89%, being greater than 16.7 degrees or 30%. The proposal relies on reasonable excavation given the context of the site. As such, the requirements of Clause 4.3(2D) are met and the 10m maximum building height applies.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	6m	7.69%	No
Rear building line	6.5m	29.27m	N/A	Yes
Side building line	2.5m (North)	2.5m (Dwelling) 560mm (Lower Deck)	N/A 77.6%	Yes No
	1m (South)	1m	N/A	Yes
Building envelope	3.5m	Outside envelope	100%	No
	3.5m	Outside envelope	66.67%	No
Landscaped area	60%	62.16% (638.4sqm)	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	No	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.17 Littoral Rainforest - Endangered Ecological Community	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
B5.11 Stormwater Discharge into Waterways and Coastal Areas	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.5 Off-Street Vehicle Parking Requirements - Low Density Residential (Amended 14/11/15 See B6.3)	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	No	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.12 Fences - Flora and Fauna Conservation Areas	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	No	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.12 Palm Beach Locality

The proposed development includes five storeys, where the locality calls for two-storey development. However, the proposed development is in a landscaped setting, adequately integrated with the



landform and landscape. The development is set below the general tree canopy height, includes building modulation to minimise bulk, and steps with the topography of the land. As such, the proposed development achieves the intention of the desired character of the area and is acceptable in this regard.

C1.3 View Sharing

The proposed development is considered against the outcomes of the control as follows:

A reasonable sharing of views amongst dwellings. (S)

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.

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:

The views from private property affected by the proposal include:

- No. 226 Whale Beach Road: Ocean, sand, surf, horizon, and Norfolk Island Pines. No icons.
- No. 232 Whale Beach Road: Ocean, sand, surf, horizon, Norfolk Island Pines, and Careel Head and its interface with the ocean. No icons.
- No. 234 Whale Beach Road: Ocean, sand, surf, horizon, Norfolk Island Pines, and partial views of Careel Head and its interface with the ocean (interrupted by Norfolk Island Pines). No icons.

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 affected views are available from the following locations:

- No. 226 Whale Beach Road: Upper east-facing deck accessed via the living room (though view from living room does to include the subject site), lower east-facing deck, and two east-facing bedrooms. Views are available across the front boundary from standing and seated positions, though the subject site is not visible from a seated position.
- No. 232 Whale Beach Road: East-facing bedroom, and east-facing deck accessed via the living room. Views are available across the front boundary from standing and seated positions.
- No. 234 Whale Beach Road: East-facing deck accessed via the living room (though view from living room does to include the subject site). View is available across the front boundary from standing and seated positions.

Extent of impact

DA2018/0797

Page 13 of 38



"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:

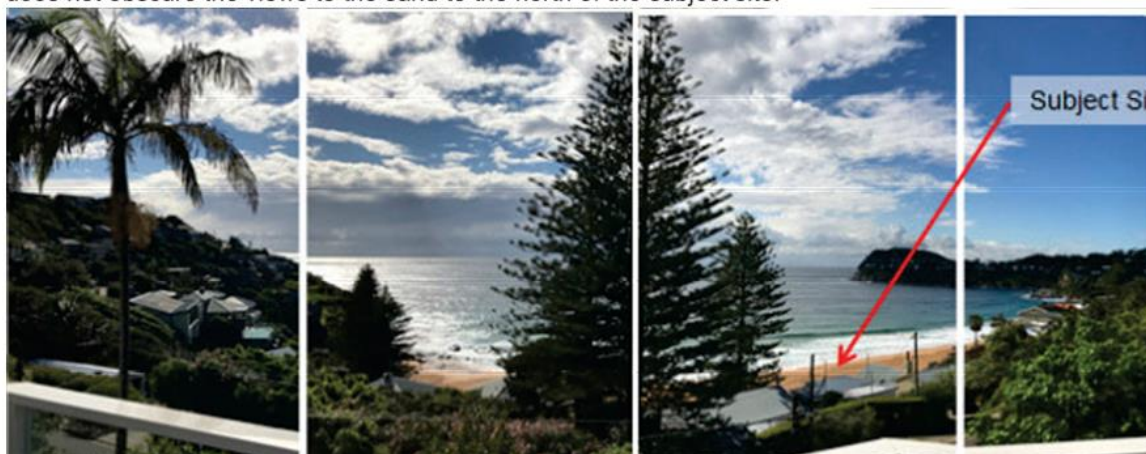
The extent of the impact on the affected views is as follows:

No. 226 Whale Beach Road: The proposed development will result in minor view loss considering the entire view available, as it will obscure some sand, but will not impact upon views to the ocean, surf, or horizon.



Above: The full view from a standing position at the upper deck at No. 226 Whale Beach Road.

No. 232 Whale Beach Road: The proposed development will result in minor view loss considering the entire view available, as it will obscure some sand and some surf (depending on the tide), but will not impact upon views to the ocean, and Careel Head and its interface with the ocean. The proposal also does not obscure the views to the sand to the north of the subject site.



Above: The full view from a standing position at the deck at No. 232 Whale Beach Road.

No. 234 Whale Beach Road: The proposed development will result in minor view loss considering the



entire view available, as it will obscure some sand and some surf (depending on the tide), but will not impact upon views to the ocean, and the partial views to Careel Head and its interface with the ocean. The proposal also does not obscure the views to the sand to the north of the subject site.



Above: The full view from a standing position at the deck at No. 234 Whale Beach Road.

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 proposed development is not compliant with the building envelope control, the northern side setback (lower deck only) and the front setback to the garage. The non-compliance with the front and northern side setbacks do not result in view loss from the affected properties. The proposed building envelope non-compliance is as a result of the steep slope of the topography. The view loss resulting from the proposal is predominantly as a result of the building height, which is compliant with clause 4.3(2D) of the Pittwater LEP 2014, and, as above, the resultant view loss is considered minor. Compliance with the building envelope would only result in a token reduction in view loss and would unreasonably restrict development on the site. It is considered that the proposed development is appropriately designed for the context of the site, and that the view loss is reasonable.

Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced. (S)

In determining the extent of potential view loss from the public domain, the planning principles outlined within the Land and Environment Court Case of Rose Bay Marina Pty Limited Vs Woollahra Municipal Council and anor (213) NSWLEC 1046 are applied to the proposal.

Nature and Scope of Views

The first step is to identify the nature and scope of the existing views from the public domain, including, but not limited to:

- Any existing obstructions of the view;
- Composition of the view (e.g. is it static or dynamic and, if dynamic, the nature and frequency of changes to the view);

DA2018/0797

Page 15 of 38



- *Are existing obstructions permanent or temporary;*
- *The curtilages of important elements within the view.*

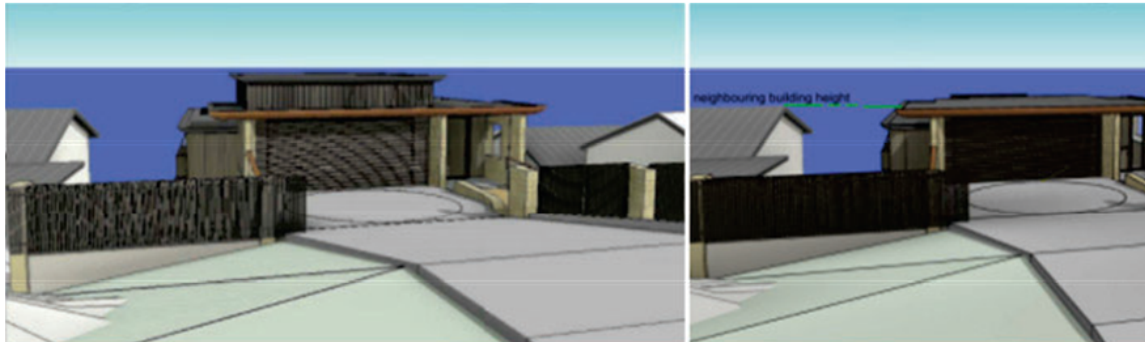
Comment to Principle 1:

The affected view contains the ocean and its horizon, with a corridor between Nos. 257 and 255 Whale Beach Road to the surf and sand. Existing obstructions to the view include dwellings and vegetation on private property and the road reserve. The built obstructions are permanent in nature. The vegetation obstructions are subject to change and is proposed to be altered as a result of the development application. This is anticipated to open up the currently obscured angles somewhat. The view is somewhat static in that the horizon does not change. The view is also somewhat dynamic in that the surf and sand are subject to tidal movements. See photographs below:



Above Left: View from the eastern footpath. Above Right: View from the western footpath.

Note: The height poles pictured represent the original garage design. The structure is reduced in height and scale with the submitted amended plans.



Above: Submitted perspectives, showing the difference in the bulk and therefore view impact between the originally submitted scheme (left) and the amended scheme (right).

Note: The above perspectives do not detail any existing or proposed landscaping on site. See photos above.

Locations of View Interruptions

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

Comment to Principle 2:

The affected view is available from the eastern and western footpaths along Whale Beach Road, which forms part of the Northern Beaches Coastal Walk.

Extent of Obstructions

The third step is to identify the extent of the obstruction at each relevant location. 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 from many positions by all people.

Comment to Principle 3:

Along the eastern footpath, the proposed development will obstruct views to the ocean, but the ocean horizon is expected to be retained. Given the reduction in the building bulk to the south, and the use of transparent building materials, the corridor to the sand and surf between Nos. 257 and 255 Whale Beach Road is expected to be retained. Along the western footpath, the proposed development will obstruct view to the ocean, but the ocean horizon is expected to be retained.

Intensity of the use of the Relevant Public Spaces

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

Comment to Principle 4: Whale Beach Road is a secondary road, used to gain access to the residential properties along the road, and to access Whale Beach. The street adjacent to the subject site forms part of the Northern Beaches Coastal Walk. Intensity of use for the purpose of the Coastal Walk is unknown.

Documentation of the View

The final step to be identified is whether there is any document that identifies the importance of the view to be assessed, such as international, national, state or local heritage recognition, or where the relevant planning controls promote or specifically requires the retention or protection of public domain views.

Comment to Principle 5:

Whale Beach Road is identified as part of Council's Scenic Streets Register, which states (of the whole road):

DA2018/0797

Page 17 of 38



"Whale Beach Road starts in North Avalon and winds up and down the coast for some six kilometres to morph into Florida Road high above the rock pool at Palm Beach. It epitomises the streetscapes of Whale Beach where the common theme is recurrent splendid views of the beach and its surf, its headlands with the surf breaking on the rocks at their base and the escarpment to the west. After rounding Little Head the views switch to the north across to McMasters Beach and Killcare on the Central Coast with glimpses of waves pounding onto the rocks at the base of the cliff 40 metres below. Between the road and those rocks the cliff top shows the typical coastal heathland vegetation of the New South Wales coast."

Overall Comment:

The view from both the eastern and western sides of the street is currently intermittent in that as the viewer moves across the subject site, it is lost from sight due to vegetation. Vegetation is proposed to be altered as a result of the development application, which is anticipated to open up the currently obscured angles somewhat.

The view loss from the public domain is caused by the proposed garage structure. As a result of amended plans in response to view loss concerns raised by Council, the height, width and bulk of the garage structure has been reduced. Additionally, where possible, transparent building materials have been used, in accordance with Clause C1.3 View Sharing of the P21 DCP. The garage structure is not compliant with the front building line, but is otherwise compliant with the built form controls within the P21 DCP and Pittwater LEP 2014, including in relation to building height. The front setback is acceptable on merit in relation to building bulk and scale. In relation to view loss, the portion of the garage that results in the greatest view loss (the south-west corner) is compliant with the front building line control. The inclusion of a garage on site is not unreasonable, and the proposed location of the garage is the most logical and practical, considering the site topography and constraints. To shift the garage further to the east in an attempt to reduce view loss would likely not result in a significant result, and would require an unreasonable redesign. It is therefore considered a reasonable development. The value of the view from the Northern Beaches Coastal Walk is reasonably retained in that views to ocean are still available to the site from the public domain.

Canopy trees take priority over views. (En, S)

The proposed development does not unreasonably impact upon trees. The valuable Norfolk Island Pine on the boundary between Nos. 257 and 259 Whale Beach Road is retained.

C1.4 Solar Access

The property to the south at No. 255 Whale Beach Road is most affected by the proposed development in relation to solar access. At No. 255 Whale Beach Road, the main private open space is located to the north of the dwelling, adjacent to a high privacy screen. The submitted shadow diagrams demonstrate that at No. 255 Whale Beach Road:

- The private open space area currently receives a small portion of sunlight between 9am and midday, and is entirely overshadowed by 3pm;
- The north- and east-facing windows and glass doors to the living room and kitchen are currently approximately 50% overshadowed at 9am, 30% at midday, and 75% at 3pm; and
- Approximately one third of the east-facing master bedroom window is currently overshadowed at 9am, and the window is totally overshadowed by midday.

The subject site and adjacent sites are in self-shadow in the afternoon due to the steep topography of the land.

The proposed development results in:



- A minor increase to overshadowing to the private open space area of No. 255 Whale Beach Road at 9am and midday (at 3pm, the private open space area is completely overshadowed due to the topography);
- A negligible increase to overshadowing of the living room glass doors of No. 255 Whale Beach Road at 9am, 50% overshadowing to the doors by midday, and full overshadowing by 3pm;
- Full overshadowing of the east-facing kitchen glass door by 9am;
- Increase in shadowing to the east-facing master bedroom window by an additional third at 9am.

The subject site has a slope of approximately 36.89%, which is considered a steep and adverse slope. Where there is adverse slope or topography, reasonable solar access to main private open space and to windows to principal living areas will be assessed on a merit basis. Subject to that merit assessment, consent may be granted where a proposal does not comply with the standard, provided the resulting development is consistent with the general principles of the development control, the desired future character of the locality and any relevant State Environmental Planning Policy. The proposal is consistent with the desired future character of the locality for the reasons detailed in the section of this report relating to A4.12 Palm Beach Locality of the Pittwater 21 DCP 2014. The State Environmental Planning Policies relevant to this application are addressed throughout this report. The proposed development is acceptable in relation to the relevant outcomes of this clause of the P21 DCP, as follows:

Residential development is sited and designed to maximise solar access during mid-winter. (En)

The proposed dwelling is closer to the south than the north, though this is due to the existing mature and healthy Norfolk Island Pine on the northern boundary of the development. However, the proposal is compliant with the required side building lines, with the exception of the lowest floor deck, though this does not contribute to overshadowing. Additionally, the proposal includes compliant landscaped open space on site. As such, the proposal is demonstrably of an acceptable footprint for the site. The proposed development is acceptable in relation to the relevant built form controls within the P21 DCP, for the reasons detailed throughout this report. In this way, the proposed development is reasonable in its context. The proposed development, being located on an east-west orientated lot, is designed in order to provide reasonable solar access in consideration of the topography of the site and surrounding areas.

A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development. (En)

The proposal provides a reasonable level of solar access to the subject site and surrounding sites, considering the site's slope and context. The level of overshadowing resulting from the proposed development is a product of the steep topography of the site and the surrounding land. In this way, overshadowing impacts on the property to the south are inherently exacerbated compared to flat land. The property to the south are particularly vulnerable to overshadowing. To require strict adherence to the solar access requirements in this case would unreasonably restrict development of the subject site. The proposed development demonstrates it is acceptable in relation to all built form controls, for the reasons detailed in this report. Further, the proposal also includes clear glazing to the proposed terraces, allowing some solar access through to the south. As such, given the reasonableness of the proposed dwelling, the overshadowing impact is considered reasonable.

Reduce usage and/dependence for artificial lighting. (En)

The subject site achieves adequate solar access in order to reduce its reliance upon artificial lighting. As above, the proposal provides a reasonable level of solar access to the subject site and surrounding sites, given the context of the area's topography and the vulnerability of the site's to the south.

C1.5 Visual Privacy



The proposed development includes windows and terraces/decks within 9m of the side boundaries. The proposed development is acceptable in relation to the relevant outcomes of this clause, as follows:

Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design. (S)

Windows to habitable rooms of the dwelling demonstrate good design in that they are offset from existing windows of adjacent dwellings. The windows are of appropriate dimensions for the room uses, in order to achieve adequate access to light and air for the subject site, without resulting in unreasonable privacy impacts. The largest portion of glazing is along the southern elevation above the living area. This does not pose an unreasonable privacy impact, as the glazing is to a void, and not a room. In relation to outdoor living areas, the dwelling demonstrates good design in relation to visual privacy. At the master bedroom level, the terrace space is centrally located and orientated towards the view to the east. At the bedrooms level, while the terrace is set closer to the south than the north, the terrace's dimensions are restricted, and the terrace is set in front of the adjacent dwelling to the south, with an eastern orientation. At the living room level, the proposed terrace is of greater dimensions, though is set well in front of the adjacent dwellings to the north and south, so will not result in unreasonable overlooking of adjacent dwellings. At the swimming pool level, the deck is appropriately screened and is set far enough to the east and low enough in order not to result in unreasonable overlooking.

A sense of territory and safety is provided for residents. (S)

Given the above, the proposed development provides and appropriate sense of territory and safety for the residents of the subject site and adjacent sites.

C1.12 Waste and Recycling Facilities

While the plans do not detail waste receptacles on the site, the site is of adequate dimensions to allow for appropriate waste storage within the property boundaries.

D12.5 Front building line

The proposed development includes a 6m front boundary setback to the garage, where a 6.5m setback is required. However, this clause also provides that where carparking is to be provided on steeply sloping sites, reduced or nil setbacks for carparking structures and spaces may be considered, so long as all other structures on the site satisfy or exceed the minimum building line applicable. As the remainder of the dwelling is set beyond the 6.5m front building line, the proposal is acceptable in accordance with the allowable variation.

D12.6 Side and rear building line

The proposed development includes a deck to within 560mm of the northern side boundary, where 2.5m is required. The proposal is otherwise compliant with the side and rear building line requirements. The proposed development is acceptable in relation to the relevant outcomes of this clause, as follows:

To achieve the desired future character of the Locality. (S)

The proposed development is consistent with the desired future character of the locality for the reasons detailed in the section of this report relating to Clause A4.12 Palm Beach Locality of the P21 DCP.

The bulk and scale of the built form is minimised. (En, S)

The proposed resultant dwelling is of comparable building bulk and scale to existing developments in the locality. The proposed development provides generally compliant side setbacks, with the exception of the northern side setback to the lower level deck. However, this deck is open in construction form, so as not to result in any unreasonable bulk. The proposal is also non-compliant with the building envelope, as a result of the steep topography of the land. This non-compliance is acceptable for the



reasons detailed in the section of this report relating to Clause D12.9 Building Envelope of the P21 DCP. The proposal is compliant with the required landscaped area, indicating that the proposed dwelling does not include too large a building footprint for the site. The proposed development steps with the topography of the land, and the proposed height is acceptable for the reasons detailed throughout this report. The proposal includes generous modulation and articulation to reduce the visual impact of the built form. Additionally, the bulk of the development steps away from the street, with the garage generally being the only visible structure from street level (the non-compliant deck is not visible). Finally, the proposal includes adequate vegetation in order to screen the built form of the proposed development. As such, the proposal demonstrates acceptable bulk and scale.

Equitable preservation of views and vistas to and/or from public/private places. (S)

The proposed development adequately preserves views and vistas to and from public and private places for the reasons detailed in the section of this report relating to Clause C1.3 View Sharing of the P21 DCP.

To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

The proposed development is acceptable in relation to view sharing for the reasons detailed in the section of this report relating to Clause C1.3 View Sharing of the P21 DCP.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)

The proposed development is appropriately designed so as to provide a reasonable level of privacy, amenity and solar access for the subject site and adjacent sites.

Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)

The proposed development provides compliant landscaped open space, and retains and proposes adequate vegetation on site, including the retention of the existing Norfolk Island Pine.

Flexibility in the siting of buildings and access. (En, S)

The proposed development is adequately sited so as to provide adequate amenity and access to the subject site and adjacent sites.

Vegetation is retained and enhanced to visually reduce the built form. (En)

The submitted plans demonstrate adequate retention and provision of vegetation in order to visually reduce the built form.

To ensure a landscaped buffer between commercial and residential zones is established.

Not applicable. The subject site is not adjacent to commercially-zoned land.

D12.8 Building envelope

The proposed development is non-compliant with the building envelope control on both the northern and southern elevations. Where the building footprint is situated on a slope over 16.7 degrees (30%), variation to this control will be considered on a merits basis. The proposed development is situated on land with a slope of approximately 20.25 degrees (36.89%). As such, the non-compliance arises due to the steep topography of the land. The proposed development is acceptable in relation to the relevant outcomes of this clause, as follows:

To achieve the desired future character of the Locality. (S)

The proposed development is consistent with the desired future character of the locality for the reasons detailed in the section of this report relating to Clause A4.12 Palm Beach Locality of the P21 DCP.



To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.

The proposed development steps down the slope of the land, away from the street level. The proposal includes adequate vegetation in order to screen the built form of the proposed development. The proposed development is generally set below the height of the trees on site and in the locality.

To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.

The proposed development requires significant earthworks due to the steep topography of the land. To require the development to employ pier and beam construction is unreasonable, as it would result in additional unacceptable non-compliances, relating to building height, privacy, overshadowing and view loss. Additionally, the proposal is acceptable in relation to Clause 4.3 Height of Buildings of the Pittwater LEP 2014. Finally, the proposal includes comparable setbacks, and bulk and scale to existing developments in the locality. As such, the proposal provides an adequate response and relationship to the spatial characteristics of the existing natural environment.

The bulk and scale of the built form is minimised. (En, S)

The proposed resultant dwelling is of comparable building bulk and scale to existing developments in the locality. The proposed development provides generally compliant side setbacks, with the exception of the northern side setback to the lower level deck. This non-compliance is acceptable for the reasons detailed in the section of this report relating to Clause D12.7 Side and Rear Building Line of the P21 DCP. The proposal is compliant with the required landscaped area, indicating that the proposed dwelling does not include too large a building footprint for the site. The proposed development steps with the topography of the land, and the proposed height is acceptable for the reasons detailed throughout this report. The proposal includes generous modulation and articulation to reduce the visual impact of the built form. Additionally, the bulk of the development steps away from the street, with the garage generally being the only visible structure from street level (the non-compliant deck is not visible). Finally, the proposal includes adequate vegetation in order to screen the built form of the proposed development. As such, the proposal demonstrates acceptable bulk and scale.

Equitable preservation of views and vistas to and/or from public/private places. (S)

The proposed development adequately preserves views and vistas to and from public and private places for the reasons detailed in the section of this report relating to Clause C1.3 View Sharing of the P21 DCP.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties. (En, S)

The proposed development is appropriately designed so as to provide a reasonable level of privacy, amenity and solar access for the subject site and adjacent sites.

Vegetation is retained and enhanced to visually reduce the built form. (En)

The submitted plans demonstrate adequate retention and provision of vegetation in order to visually reduce the built form.

D12.12 Fences - Flora and Fauna Conservation Areas

The proposed development includes a front fence that varies in height between 700mm to 1.8m due to the topography of the land. The proposed fence is otherwise compliant with this control, as it is compatible with the streetscape character, does not unreasonably obstruct views from the road, is open in construction, is of dark-colours and finishes, and is screened by landscaping. The proposed development is acceptable in relation to the relevant outcomes of this clause, as follows:

To achieve the desired future character of the Locality. (S)



The proposed development is consistent with the desired future character of the locality for the reasons detailed in the section of this report relating to Clause A4.12 Palm Beach Locality of the P21 DCP. The proposed fencing is consistent with and complementary to existing fencing in the locality.

An open streetscape that allows casual surveillance of the street. (S)

The proposed front fence is of a height and open form that will allow casual surveillance from the proposed dwelling to the street.

Fences, where provided, are suitably screened from view from a public place. (S)

The proposed fence is suitably obscured from the street with the inclusion of screening vegetation.

Safe and unhindered travel for native animals. (En)

To ensure any fencing provides for the safe and unhindered travel of native animals. (En)

The proposed fence is open in its construction form, allowing for the safe and unhindered travel of native animals.

To ensure fences compliment and conserve the visual character of the street and neighbourhood

The proposed fencing is consistent with and complementary to existing fencing in the street and neighbourhood.

To define the boundaries and edges between public and private land and between areas of different function.

The proposed fence adequately delineates the boundary of the subject site from the public domain.

To contribute positively to the public domain.

The proposed fence is of a contemporary design suitable in the streetscape and public domain.

To enhance safe sight distances and clear view of the street (including to and from driveways) for motorists and pedestrians. (S)

The proposed fence is set 6.5m back from the roadway, due to the wide road reserve, thereby providing adequate sight distances for the safety of motorists and pedestrians.

To ensure heritage significance is protected and enhanced. (S)

The site is not heritage listed, nor in a heritage conservation area, nor in the vicinity of a heritage-listed item or heritage conservation area.

To ensure an open view to and from the waterway is maintained. (S)

A suitable view to the waterway is maintained through the property, as detailed in the section of this report relating to Clause C1.3 View Sharing of the P21 DCP.

To ensure native vegetation is retained (En).

The proposed development provides adequate vegetation, including native species, and allows for the retention of the Norfolk Island Pine on site.

An area of private open space is provided for properties that front the Pittwater Waterway. (S)

Not applicable. The proposed development does not front the Pittwater Waterway.

D12.13 Construction, Retaining walls, terracing and undercroft areas

The proposed development involves significant earthworks, rather than using lightweight construction with pier and beam footings. The proposed development is acceptable in relation to the relevant outcomes of this clause, as follows:



To achieve the desired future character of the Locality.

The proposed development is consistent with the desired future character of the locality for the reasons detailed in the section of this report relating to Clause A4.12 Palm Beach Locality of the P21 DCP. The level of excavation included in this proposal is consistent with developments in the Whale Beach area, due to the land's steep topography and valuable views, where higher pier and beam construction may cause greater impact than earthworks.

To protect and minimise disturbance to natural landforms.

The subject site currently includes moderate earthworks. The proposed development increases the amount of excavation on site. However, the proposal does not unreasonably impact on natural landforms, as the earthworks are set away from the existing rock outcrops and the sand dune to the east. Further, the proposal has restricted earthworks at the lower levels in order to retain the existing Norfolk Island Pine.

To encourage building design to respond sensitively to natural topography.

The proposed development, while including significant earthworks, steps down with the topography of the land, thereby minimising the impacts the proposal has in relation to bulk and scale, view loss, overshadowing and privacy. Further, the proposal has restricted earthworks at the lower levels in order to retain the existing Norfolk Island Pine.

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

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

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



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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/0797 for Demolition works and construction of a new dwelling house with car stacker garage, swimming pool, front fencing and associated driveway and landscaping works on land at Lot 171 DP 15376, 257 Whale Beach Road, WHALE BEACH, 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
A1101 Site Plan	24 September 2018	Walter Barda Design
A2001 Floor Plans Lower	24 September 2018	Walter Barda Design
A2002 Floor Plans Upper & LOS Area Plan	24 September 2018	Walter Barda Design
A3001 Elevations West, South & East	24 September 2018	Walter Barda Design
A3002 Nth Elevation & Sections 01, 02, 03 & 04	24 September 2018	Walter Barda Design
A3101 Long Sections 01	24 September 2018	Walter Barda Design
Schedule of Finishes Page 1 of 2	24 April 2018	Walter Barda Design
Schedule of Finishes Page 2 of 2	24 September 2018	Walter Barda Design

Engineering Plans		
Drawing No.	Dated	Prepared By
SW200 Stormwater Concept Design - Lower Level Plan	26 April 2018	SGC Consulting Engineers
SW201 Stormwater Concept Design - Bedroom Level Plan	26 April 2018	SGC Consulting Engineers

DA2018/0797

Page 25 of 38



SW202 Stormwater Concept Design - Roof Plan	26 April 2018	SGC Consulting Engineers
SW300 Stormwater Concept Design - Details Sheet	26 April 2018	SGC Consulting Engineers
SW400 Erosion and Sediment Control - Plan and Details	26 April 2018	SGC Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
ABSA Assessor Certificate No. 2668408	20 April 2018	Taylor Smith Consulting
Arboricultural Impact Assessment	22 March 2018	Plateau Trees
BASIX Certificate No. 917724S	20 April 2018	Taylor Smith Consulting
Bushfire Hazard Assessment Report	9 March 2018	Building Code & Bushfire Hazard Solutions
Geotechnical Investigation	15 March 2018	White Geotechnical Group
NatHERS Certificate No. 2668408	20 April 2018	Taylor Smith Consulting
Root Mapping Assessment	11 April 2018	Plateau Trees

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
A1190 Landscape Plan	24 September 2018	Walter Barda Design

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

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

2. Prescribed conditions (Demolition):

- (a) 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 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
 - (ii) 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.

- (b) 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.

- (c) 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.

Reason: Legislative Requirement (DACPLB09)

3. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and



- B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative Requirement (DACPLB09)

4. **General requirements (Demolition):**

- (a) Unless authorised by Council:
Demolition and excavation works are restricted to:
 - o 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 a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. 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) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(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.

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

5. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.



- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.



- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

6. Security Bond

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

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

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

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

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

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

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

Reason: To ensure suitable vehicular access to private property

8. 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:

DA2018/0797

Page 31 of 38



- (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 Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

9. Shoring of Adjoining Property

Should the proposal require shoring to support an adjoining property or Council land, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings. Council approval is required if temporary ground anchors are to be used within Council land. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

10. Vehicle Crossings Application

An application for Driveway levels shall be made with Council subject to the payment of fee applicable at the time of payment. The fee includes all Council inspections relating to the driveway construction and must be paid. Approval is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To facilitate suitable vehicular access to private property

11. Construction Management Program

An application for Traffic Management Plan is to be submitted to Council for approval. The Traffic Management Plan shall be prepared to RMS standard by an appropriately certified person. An approval is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

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

12. Discharge Point from Rainwater Tank

As part of an integrated on-site storm water management system, storm water overflow from the rainwater tank is to an appropriately located on-site infiltration dispersion trench in accordance with the design by SGC Engineering Value, project number 20180026.

Reason: To ensure appropriate provision for disposal and storm water management arising from development.

13. Construction Certificate Drainage Details

Drainage plans including specifications and details showing the site Stormwater management are to be submitted to the Accredited Certifier with the Construction Certificate application. Such details are to be accompanied by a certificate from (as appropriate) either a Licensed plumber or qualified practicing Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a Corporate member and has appropriate experience and competence in the related field, that the storm water management system complies with the requirements of section 3.1.2 Drainage of the Building Code of Australia



Housing Provision and AS/NZS 3500.3.2 - Stormwater Drainage. The details shall include disposal of site storm water (if the site is in a known slip area the storm water disposal system must comply with the recommendations of a Geotechnical Engineers Report). Note:

Reason: To ensure appropriate provision for disposal and Maintenance Stormwater management arising from the development.

14. **Geotechnical Report Recommendations have been correctly incorporated into designs and structural plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 15 March 2018 are to be incorporated into the construction plans.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

Reason: To ensure geotechnical risk is managed appropriately.

15. **Amend Landscape Drawings – Tubestock only within the TPZ of Norfolk Island Pine**

The Landscape drawings, submitted in conjunction with the approved Development Application and as amended by these conditions of consent, is to ensure only tubestock is to be planted within the TPZ of the existing Norfolk Island Pine.

Plans are to be amended and submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure protection and retention of the existing Norfolk Island Pine.

16. **Compliance with standards (Demolition):**

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 Council prior to the commencement of demolition works.

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

17. **Compliance with Standards**

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

18. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection
DA2018/0797

Page 33 of 38



of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) 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

19. **Vehicle Crossings**

The provision of a vehicle crossing 4.5 metres wide at the kerb to 5.5 metres wide at the boundary in accordance with Northern Beaches Council Drawing No A4-3330/5 Extra Low and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. The redundant layback is to remain and the existing crossing adjusted to suit the new driveway crossing levels in order to maintain the access to the adjoining property at 259 Whale Beach Road. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property

20. **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.

21. **Site Entry Access way**

An all-weather access way at the front of the property consisting of 50-75mm aggregate or similar material at a minimum thickness of 200mm and 15metres long laid over geotechnical fabric is to be constructed prior to commencement of works and maintenance over the works period.

Reason: To reduce sediment being taken offsite

22. **Cleaning of Vehicles Leaving Site**

Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.

Reason: To reduce sediment being taken offsite

23. **Noise and Vibration**

The construction of the development and preparation of the site, including operation of vehicles, must be conducted so as to avoid unreasonable noise or vibration and not cause interference to adjoining or nearby occupations

Reason: To ensure the amenity of the surrounding area for residents

24. **Protection of Adjoining Property - Excavation**

Where excavations extend below the level of the base of the footings of a building on an



adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.

Reason: To ensure private and public safety

25. Tree and vegetation protection

A) Existing trees and vegetation shall be retained as follows:

- i) all trees and vegetation located within the site,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

B) Tree protection shall generally be undertaken as follows:

- i) all tree and vegetation protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4.
- ii) any tree roots exposed during excavation with a diameter greater than 30mm within the TPZ must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,
- iii) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- iv) no tree roots greater than 30mm diameter are to be cut from protected trees unless authorized by the Project Arborist on site,
- v) all structures are to bridge tree roots greater than 30mm diameter unless directed by a AQF Level 5 Arborist on site,
- vi) should either or both iv) and v) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures provided. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority.

Reason: to retain and protect significant planting on development sites.

26. Project Arborist

A Project Arborist with minimum qualification equivalent to AQF Level 5 is to be appointed prior to the commencement of works to supervise all works within 5 metres of the existing Norfolk Island Pine located along the northern boundary between 257 and 259 Whale Beach Road, Whale Beach, inclusive of the following requirements:

- i) all work carried out inside of the TPZ must be supervised by the Project Arborist,
- ii) all existing ground levels within a 5 metre zone around the existing Norfolk Island Pine shall



be retained without alteration,

iii) no structures are permitted within a 5 metre zone around the existing Norfolk Island Pine, as documented on Plan A2001 (section 1: 00 Lower Level), issue B, excluding the structural piers,
iv) the structural piers shall be located outside of the SRZ (at least 3500mm from the trunk), as directed on-site by the Project Arborist,

v) The Project Arborist shall provide on site recommendations to protect the existing Norfolk Island Pine, inclusive of recommended design changes,

vi) The Project Arborist shall provide documentary details including photographic evidence of works undertaken, and any on-site recommendations and advice, and this shall be submitted by the Arborist to the Certifying Authority prior to Occupation Certificate,

vii) scheduled monthly inspections, for a period of 12 months, shall be carried out by the Project Arborist during and after completion of development works.

Reason: To ensure protection of vegetation proposed for retention on the site.

27. Protection of rock and sites of significance

A) All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

B) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

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

28. Landscape completion

Landscaping is to be implemented in accordance with the Landscape Plan A1190, prepared by Walter Barda Design, issue B, inclusive of the following requirement:

i) all nominated tree planting shall be planted at 75 litre pot size, and shall have a minimum area of 3 metres x 3 metres. Canopy trees are to be located a minimum of 5 metres from existing and proposed built structures, or minimum of 3 metres where pier and beam footings are used,
ii) the nominated *Cupaniopsis anacardioides* shall be replaced with a non-invasive native tree species,
iii) it is advised that the nominated *Acmena smithii* should be changed to *Acmena smithii* 'cultivars' as used for screen planting to achieve the design intent of the design,
iv) 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 plan and inclusive of any conditions of consent.

Reason: to ensure that the landscape treatments are installed to provide landscape amenity and privacy.



29. **Condition of retained vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an AQF Level 5 Arborist (or equivalent), shall be submitted to the Certifying Authority, assessing the health and impact of trees and vegetation required to be retained, and in particular the existing Norfolk Island Pine, as a result of the proposed development, including the following information:

- a) Compliance to Arborist recommendations for tree protection and excavation works.
- b) Extent of damage sustained by vegetation as a result of the construction works.
- c) Any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: to ensure compliance with the requirement to retain and protect significant planting on development sites.

30. **Certification Elevated Parking Facility Work**

An appropriately qualified and practicing Structural Engineer shall certify to the Council / Principal Certifying Authority that the elevated parking facility was constructed in accordance with this consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

Reason: Safety and Compliance with Standards

31. **Geotechnical Certification Recommendations have been Implemented**

Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

Reason: To ensure geotechnical risk is mitigated appropriately.

32. **Restoration of Damaged Public Infrastructure**

Restoration of all damaged public infrastructure caused as a result of the development to Council's satisfaction. Council's written approval that all restorations have been completed satisfactorily must be obtained and provided to the Private Certifying Authority with the Occupation Certificate application.

Reason: To ensure public infrastructure is returned to the state it was in prior to development

33. **Certification of Water Management**

Certification is to be provided to the accredited certifier by a qualified experienced practising Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E.), or who is eligible to become a corporate member and has appropriate experience and competence in the related field, that the drainage/stormwater management system has been installed to the manufacturer's specification (where applicable) and completed in accordance with the engineering plans and specifications required under this consent.

Reason: To ensure Stormwater Management has been built in accordance with the plans and specifications required under this consent

257 Whale Beach Rd
WHALE BEACH NSW 2107
Lot 171 DP15376

[illegible]