AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL MEETING

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

WEDNESDAY 5 DECEMBER 2018

Beginning at 1:00pm for the purpose of considering and determining matters included in this agenda.

Peter Robinson
Executive Manager Development Assessment

northern beaches council

Panel Members

Peter Biscoe	Chair
Brian Kirk	Town Planner
Annelise Tuor	Town Planner
Nick Lawther	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

northern beaches council

Agenda for a Meeting of the Northern Beaches Local Planning Panel to be held on Wednesday 5 December 2018 in the Council Chambers, Civic Centre, Dee Why Commencing at 1:00pm

1.0 DECLARATIONS OF INTEREST

2.0 MINUTES OF PREVIOUS MEETING

2.1 Minutes of Northern Beaches Local Planning Panel held 4 December 2018

3.0 DEVELOPMENT APPLICATIONS 5

3.1 DA2018/1113 - 1753 Pittwater Road, Mona Vale - Construction of a Shop Top Housing development and strata subdivision 5

3.2 MOD2018/0534 - 209-211 Ocean Street, Narrabeen - Modification of DA2017/1136 granted for alts and ads to a shop top housing development 65

3.3 MOD2018/0494 - 69 Pittwater Road, Manly - Modification of Development Consent DA181/2012 granted for demolition of the existing buildings and construction of a mixed use development 101

3.4 MOD2018/0193 - 18-19 The Strand, Dee Why - Modification of Development Consent DA2005/1227 granted for shop top housing, restaurant, cafe, retail shop and basement parking 124

3.5 DA2018/0304 - 22 Redman Road, Dee Why - Demolition works and construction of a boarding house development 178

2.0 MINUTES OF PREVIOUS MEETING

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

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 4 December 2018 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1	**DA2018/1113 - 1753 PITTWATER ROAD, MONA VALE - CONSTRUCTION OF A SHOP TOP HOUSING DEVELOPMENT AND STRATA SUBDIVISION**
REPORTING OFFICER	**Matt Edmonds**
TRIM FILE REF	**2018/750392**
ATTACHMENTS	**1 Assessment Report** **2 Plans**

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is development to which *State Environmental Planning Policy No 65 – Design Quality of Residential. Apartment Development* applies and is 4 or more storeys in height.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2018/1113 for construction of a Shop Top Housing development and strata subdivision at Lot 1 DP 715158, 1753 Pittwater Road, Mona Vale subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1113

Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 1 DP 715158, 1753 Pittwater Road MONA VALE NSW 2103
Proposed Development:	Construction of a Shop Top Housing development and strata subdivision
Zoning:	B4 Mixed Use
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Bellevue Co (Mona Vale) Pty Ltd
Applicant:	Bellevue Co (Mona Vale) Pty Ltd

Application lodged:	28/06/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	11/07/2018 to 29/07/2018
Advertised:	14/07/2018
Submissions Received:	0
Recommendation:	Approval

Estimated Cost of Works:	$ 4,008,726.00

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 - B6.3 Off-Street Vehicle Parking Requirements
Pittwater 21 Development Control Plan - B8.4 Construction and Demolition - Site Fencing and Security
Pittwater 21 Development Control Plan - C1.1 Landscaping
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.12 Waste and Recycling Facilities
Pittwater 21 Development Control Plan - C2.2 Safety and Security
Pittwater 21 Development Control Plan - C2.3 Awnings
Pittwater 21 Development Control Plan - C2.22 Plant, Equipment Boxes and Lift Over-Run
Pittwater 21 Development Control Plan - D9.6 Front building line

SITE DESCRIPTION

Property Description:	Lot 1 DP 715158 , 1753 Pittwater Road MONA VALE NSW 2103
Detailed Site Description:	The site is legally described as Lot 1 in Deposited Plan 715158, and is commonly known as 1753 Pittwater Road, Mona Vale. The is irregular in shape, with a 12.19m wide frontage to Pittwater Road, a 21.195m wide frontage to Bungan Lane, a maximum depth of 79.32m, and a total area of 1167m². A two storey commercial building is located on the eastern part of the site fronting Pittwater Road, with at at-grade car park for 22 vehicles on the western part of the site. Pedestrian access can be gained from both Pittwater Road and Bungan Lane, with vehicular access limited to Bungan Lane. The site experiences a slight fall of approximately 3.3m from Bungan Lane down to Pittwater Road, with a slope of approximately 4%. The site adjoins a classified road (Pittwater Road) and is located within the Mona Vale Commercial Centre. Whilst the eastern-most portion of the site that adjoins Pittwater Road is subject to flooding, the majority of the site is above the Flood Planning Level and is not subject to any hazards. The site is surrounded by development of varying use, scale, age and character, including a multi-storey public carpark to the south-west, and two and three storey mixed use buildings to the north.

Map:

SITE HISTORY

Relevant history of the Site

On 29 July 2008, development consent was granted for alterations and additions to the existing commercial development, including the addition of a first floor.

On 31 October 2008, development consent was granted for further alterations and additions to the existing commercial development, including the installation of a lift.

On 5 July 2012, development consent was granted to subdivide 1 existing ground floor tenancy to provide for 3 smaller tenancies.

On 26 September 2016, a prelodgement meeting was undertaken to discuss options to subdivide the site to provide for the retention of the existing commercial building fronting Pittwater Road, with a shoptop housing development at the rear of the site fronting Bungan Lane.

History of the Application

On 28 June 2018, the development application was lodged with Council.

On 29 August 2018, the assessing officer undertook an inspection of the site.

On 2 November 2018, the assessing officer undertook a further inspection of the site.

On 4 October 2018, the assessing officer met with the Applicant to discuss concerns regarding:

- Building height
- Landscaping
- Solar access
- Proximity to 1749 Pittwater Road
- Acoustics

- Parking shortfall
- Waste collection
- Construction methodology
- Indicative allocation/subdivision
- Access through the ground floor
- Apartment design/internal amenity

On 9 October 2018, Council advised of these concerns in writing and provided a 3 week time-frame to address these concerns.

On 1 November 2018, amended plans were provided to Council.

On 5 November 2018, an amended clause 4.6 submission was provided to Council, in acknowledgement of the amended plans.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the construction of a shoptop development at the subject site. Specifically, the application proposes:

- the retention of the existing commercial building fronting Pittwater Road, with a gross floor area of 1014m²
- the demolition of the existing at-grade parking area
- the construction of a four storey shoptop housing development over two levels of basement carparking fronting Bungan Lane, comprised of:

  - a new ground floor commercial tenancy with a gross floor area of 49.7m²,
  - 24 x retail parking spaces, inclusive of 1 space for people with disabilities
  - 16 x residential spaces
  - 2 x residential visitor spaces
  - 4 x 1 bedroom apartments
  - 4 x 2 bedroom apartments
  - 2 x 3 bedroom apartments

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 ('P21 DCP') 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	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions"

Section 4.15 Matters for Consideration'	Comments
Regulation 2000 (EP&A Regulation 2000)	of development consent. These matters can be addressed via a condition of consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted. 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 can be addressed via a condition of consent.
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	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the P21 DCP section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
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	No submissions were received.
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.

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 of the application Council received no submissions.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application proposes shop top housing mixed use development with three (3) residential levels, three (3) car parking levels being located at the ground floor and the basement, plus a retail tenancy located on the ground floor. The building will contain ten (10) sole occupancy units. Note that no formal assessment of the existing 'PRP building' has been undertaken except that the exit path of travel which needs to pass through the 'new development' car park will need to be addressed by Fire Engineering Report or a Modification to any Consent issued, prior to proceeding with the building.
Environmental Health (Acid Sulphate)	
	Was sufficient documentation provided appropriate for referral? — YES
	Are the reports undertaken by a suitably qualified consultant? — YES
	What class is the site in on the WLEP2011 Acid Sulfate Soils Map? — Class 5
	Is there risk of acid sulfate soil disturbance? — YES
	Will the excavations exceed the depth determined in the risk map? — NO
	Does the report adequately address acid sulfate risk mitigation? — YES
	Have you considered disposal of water during excavation, pump out etc. — YES
	Have you considered disposal of contaminated soil. — YES
	General Comments The Environmental Health Department has no objections to the development subject to conditions being imposed.
	Recommendation — APPROVAL - subject to conditions
	Comments completed by: Max Payne Date:19/07/2018
Environmental Health (Industrial)	
	Is the proposal for an industrial use? — NO
	Was sufficient documentation provided appropriate for referral? — YES
	Are the reports undertaken by a suitably qualified consultant? — YES

Internal Referral Body	Comments	
	Have you reviewed the Statement of Environmental Effects, and consider ongoing use, such as: - Processes with emphasis on potential pollution (air, noise, water and land) - Hazardous Materials, liquids stored on site - Waste storage, disposal. - Mechanical ventilation	YES
	Have you Consider impact of noise, hours of operation, location to nearest residential, location of equipment, times of deliveries, noise management plans, acoustic reports etc.	YES
	If the proposal is a scheduled premises have you recommended that the DAO refer the proposal to OEH?	N/A
	General Comments The Environmental Health Department has no objections to the development application subject to the recommended conditions being imposed. Please note that hours of operation may become an issue if the use of the site generates noise. It is recommend that a condition is imposed on the hours of operation for the use of the commercial/retail component of the development as the use of the site is currently unknown. Recommend imposing the requirement to lodge a development application if a food premise or other noise generating establishment is to operate from the retail/commercial component of premise as the sensitive receivers are directly above the location of the retail/ commercial component of the development.	
	Recommendation	APPROVAL - subject to conditions
	Comments completed by: Max Payne Date: 19/07/2018	
Landscape Officer	In terms of deep soil provisions, the landscape proposal is not supported in its current form. The landscape proposal fails to achieve the landscape intent of the SEPP No. 65 - Apartment Design Guide, with reference to the desired landscape intent within deep soil areas. Deep soil areas are required to be sufficient in ground surface area to support trees. The suggested ground area for planting of a small tree as classified within the Apartment Design Guide is 15m3, which may be interpreted as 5m x 3m x 1m depth or similar. It is noted that a 1m depth zone is typically required to be considered as landscaped area within Pittwater 21 DCP controls. The 2.5m setback limits the opportunity to satisfy this requirement, whereas the required 3.5m setback at ground level may achieve the	

Internal Referral Body	Comments
	required landscape result within deep soil for shop top housing. The existing substation Kiosk occupies deep soil within the proposal, but it is not able to be planted to achieve the intent of deep soil (ie. planting of trees). The existing Kiosk restricts any planting, and Ausgrid requirements for horizontal and vertical access will exclude planting immediately around the Kiosk. Retention of the existing Yellow Cane Palms around the Kiosk do not provide landscape amenity and shade as required by the Apartment Design Guide for deep soil area. The proposed Livistona (Cabbage Tree Palm) planting along the laneway frontage provides delivery of the minimum 4m2 planter or landscaped area to be provided as a feature at the ground level of the front building façade, and provide landscaping to the front of the development, under C1.1 Landscaping. <u>Assessing Officer Comment</u>: The proposal was amended to include additional planters, including a 6.6m x 4.6m x 1m deep planter in the centre of the site. The proposal is considered to provide adequate landscaping for a shop top housing development located within a commercial centre.
NECC (Development Engineering)	The submitted stormwater management plan and access proposal for the development is acceptable. No Development Engineering objection is raised subject to conditions.
Strategic and Place Planning (Urban Design)	CURRENT ASSESSMENT 13.11.2018 The revised drawings demonstrate a slight breach of the height control (3-5%), which in the context of the immediate neighbourhood, streetscape and urban design context, is acceptable. The revised drawings have addressed most of the issues raised in the previous Urban Design assessment where practicable. Recommended for approval. END PREVIOUS ASSESSMENT **1. Built Form Controls** ***Pittwater 21 LEP 2014 (PLEP) - Part 4 Principal Development Standards*** *(1) The objectives of this clause are as follows:* *(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,* *(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,* *(c) to minimise any overshadowing of neighbouring properties,* *(d) to allow for the reasonable sharing of views,* *(e) to encourage buildings that are designed to respond sensitively to*

Internal Referral Body	Comments
	the natural topography, *(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.* RESPONSE The proposed development exceeds the Pittwater LEP 13m Height control. The drawings do not demonstrate lift over runs, mechanical plant and associated screening that would feature over and above that demonstrated on the drawings and will result in further increases in the proposed height. Associated with this is the requirement to increase the floor to ceiling height on the commercial level which will push the current proposed height further over the height control. There are a number of issues associated with and factors contributing to the height exceedance. The upper storey penthouses are not suppported. Refer also ADG comments below Commercial Ceiling heights. **2. Pittwater 21 Development Control Plan - 2014** *A4.9 Mona Vale Locality* *Desired Future Character* *a. . . . Future development will maintain a building height limit below the tree canopy and minimise bulk and scale. . .* RESPONSE Aspects/ views from particular locations to the west toward the ridge line will reveal the height exceedance and is not in keeping with the desired future character. *b. The design, scale and treatment of future development within the Mona Vale commercial centre will reflect principles of good urban design. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.* RESPONSE Landscaping treatment combined with the setback on Bungan Lane provide relief from the adjacent developments' zero lot alignments and is supported. Consideration should be made regards the large feature palm tree and the health and safety of pedestrians on the footpath below and amenity to the apartment residents. It is common for bats to nest, reside and feed off large fruit bearing palm trees. Consideration of amenity and health issues associated

Internal Referral Body	Comments
	with bats and the associated health risks to future residents, particularly apartments directly adjacent to the palm tree is to be addressed. In addition, there are safety issues with the dropping of large palm fronds onto pedestrian pathways below. Consideration should be given to alternative feature plantings, preferably native species to encourage birdlife to the area. Refer C1.1 Landscaping; Landscaping retains and enhances Pittwater's biodiversity by using locally native plant species (En) *C1.4 Solar Access* *Outcomes* *Residential development is sited and designed to maximise solar access during mid-winter. (En)* *A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development. (En)* *Reduce usage and/dependence for artificial lighting. (En)* *Variations* *General* *Where the following constraints apply to a site, reasonable solar access to the main private open space and to windows to the principal living area will be assessed on a merit basis:* *• where the orientation or shape of a lot precludes northerly orientation (20o west to 30o east of north),* *• where there is adverse slope or topography,* *• where there is existing vegetation, obstruction, development or fences that overshadow, or* *• where other controls have priority, e.g. heritage and landscaping considerations.* *Subject to a 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.* *Shop top housing* *Council may consider a variation for shop top housing on sites constrained by orientation, existing or proposed development, etc provided that:* *• the outcomes of this clause are achieved* *• the principal living area and private open space for at least 70% of dwellings proposed receive a minimum 3 hours of sunlight between 9am and 3pm on 21st June, . . .* RESPONSE Solar Access constrained by adjacent bounding properties and site/lot

Internal Referral Body	Comments
	orientation. The design has optimised opportunities on the site to achieve adequate solar gain however there remain several units that are non-compliant with solar access controls. Deletion of the upper storey penthouse apartments provides an opportunity to address solar roof skylights that may assist to achieve solar gain within the depth of the plan where solar access is compromised. **3. Apartment Design Guide (ADG)** **2F Building Separation** The proposed development demonstrates adequate separation to the building in the rear courtyard. **2H Side and Rear Setbacks** The proposed development provides adequate setbacks. **3C Public Domain interface** The proposed development is in a B4 Mixed Use Zone. The narrow laneway divides and is predominantly development of a similar bulk and scale on both sides of the laneway. Directly opposite to the west is a vacant lot, posing no issues with overlooking, overshadowing and amenity by virtue of the separation. **3F Visual Privacy** Direct lines of sight should be avoided for windows and balconies across corners (refer page 63-65 ADG) There are several apartment windows on the eastern elevation that do not benefit from deep balconies to provide privacy screening. Windows on this orientation should provide screening to avoid overlooking from and to the internal courtyard. **4A Solar and Daylight Access** The drawings demonstrate adequate orientation to optimise limited daylight and solar access to the majority of apartments. The addition of skylights to internal rooms deep into the plan as suggested above is recommended. The applicant is encouraged to demonstrate solar gain to the internal spaces through the use and representation of internal shadow diagrams. (See page 78 ADG) **4B Natural Ventilation** Apartments 2, 4, 6 and 8 have compromised ventilation strategies. The remainder of the proposed development demonstrates cross ventilation requirements can be achieved with most of the apartments. Additional measures to optimise cross ventilation in the compromised apartments, through exploration of the floor plans across the development, is encouraged.

Internal Referral Body	Comments
	4C Ceiling Height *Greater than minimum ceiling heights for retail and commercial floors of mixed use developments are encouraged to promote flexibility of use. Café and Restaurant type tenancies require greater minimum ceiling heights of 4m to allow additional servicing needs. The tenancy type is not defined in the documentation, and as such would assume the tenancy allows for café/restaurant and retail as alternatives.* The current floor to ceiling height is 3.3m (assuming the 3.5m datum on the drawing is inclusive of 200mm slab) The minimum floor to ceiling height as recommended by the ADG has not been achieved. Compliance with the recommended floor to ceiling height to allow for a variety of tenancies is recommended.
Traffic Engineer	**Servicing:** The servicing of the site should occur wholly within the site. 1P parking restrictions apply along Bungan Lane. As such servicing from the street is unfavorable. The plans shall be amended to provide servicing facilities onsite. This will enable residential tenants to engage removalist vehicles so as to move into and out of the building. Accommodation of Council's 8.8m MRV waste vehicle would also be beneficial. **Parking:** The existing 22 spaces are to be retained for the current commercial building onsite. An additional 18 spaces are proposed for the new commercial and residential tenancies. Based on the RMS Guidelines, - 2 spaces required for the Commercial. - 12 spaces for the residential. However in accordance with Council's DCP, there would be a shortfall of 3 spaces. Due to the fact that the site is well serviced by public transport, the 18 spaces is deemed adequate to service the additional components of the site. Traffic Team raises no objections subject to any comments raised by the Development Engineer. **Traffic:** The existing commercial building is to be retained, as well as the associated parking. Therefore any impacts of traffic will be calculated on the net increase generated from the proposed site. Based on RMS Guidelines:

Internal Referral Body	Comments
	- 1 vehicle in the peak hour for the Commercial. - 4 vehicles in the peak hour for the medium density residential. The net increase of 5 vehicles in the peak hour is deemed negligible on the road network. Traffic Team raise no objection. **Pedestrian:** Upgrade of the footpath and Public Domain on both site frontages will be required to ensure pedestrian safety to, from and around the site. Traffic Team raise no objections subject to conditions. **Car Park Layout:** Parking layout and ramp grades deemed compliant with AS2890.1. Further detail of the waiting bay and ramp operation will be required. Traffic Team raises no objection subject to conditions. <u>Assessing Officer Comment</u>: Whilst identified by the Traffic Engineer as being unfavourable, the incorporation of a loading bay at the frontage of the site would not only be of benefit to the subject site, but to a number of retail premises in the vicinity of the site that do not have vehicle access or on-site loading facilities, including the tenancies at 7, 9 and 11 Waratah Street. Although a timed loading bay would remove 2 on-street 1 hour parking spaces, it is noted that there are hundreds of short-stay public parking spaces provided in the adjoining public car park, located less than 20m from the parking spaces that would be removed. The ability for a garbage/removalist truck to enter the site is considered to be an unreasonable requirement with respect to the size and scale of the site, particularly noting that the turning requirements required at the driveway entrance would result in the permanent removal of 2 parking spaces. As such, a condition of consent is recommended to require a timed limited loading bay at the frontage of the site.
Waste Officer	The submission does not satisfy the requirements of Northern Beaches Waste Management Guideline. Details as follows Bin room location and design The bin room does not accommodate 8 x 240L bins. The plan only shows a suitable area for 7 x 240L bins. The bin room is located further than 6500mm from the front property boundary and behind doors which may be secured The bin room must be fully enclosed and integrated into the development so it does not appear from the street as a bin room to discourage illegal dumping. The bin room is to not house other services such as pipes, electrical and air con units. Bulk waste room The applicant has not provided a bulk waste room on the plans. This is to be 4 cubic meters of practical space to fit a lounge, fridge or

Internal Referral Body	Comments
	mattress. This is ideally to be adjacent to the bin room and enclosed (integrated as part of the development to ensure it does not stand out). Amended Comments (dated 15.11.2018) Waste Management will support the location of the binroom in this instance even though it is beyond the 6.5m requirement. The following will need to be resolved before we will support this proposal entirely: • Removal of the gates. With the bulky waste room located in a lower level of the building it will be the owners corporation's responsibility to place the materials at the kerbside for collection. Collection of waste from this development will result in the blocking of vehicular traffic in Bungan Lane whilst the collection service is undertaken. Is it possible to have parking restrictions placed in the lane in front of this building on collection day? Assessing Officer Comments: See further comment with regard to clauses C1.12 and C2.9 of P21 DCP.

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 a commercial purpose for a significant period of time. 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.

SEPP 65 - Design Quality of Residential Apartment Development

The application seeks consent for a 4 storey shop top housing development comprising 10 dwellings, and as such, the provisions of *State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development* ('SEPP 65') apply.

Clause 28 of SEPP 65 requires a consent authority to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration) the design quality of the development when evaluated in accordance with the design quality principles identified in Schedule 1 of SEPP 65, and the *Apartment Design Guide*.

The design quality principles are considered as follows:

- *Principle 1: Context and Neighbourhood Character*

  Comment: The proposed development is considered to be an appropriate fit for the site, providing further activation and much needed softening of Bungan Lane. The proposed built form responds well to the scale and form of adjoining buildings, with minimal impact upon the current or potential future use of adjoining sites and the urban environment.

- *Principle 2: Built Form and Scale*

  Comment: The subject site is surrounded by buildings of varied use, proportion, height and scale. However, it is noted that the more recent shop top housing developments throughout the Mona Vale Commercial Centre are generally 4 storeys in height, consistent with that currently proposed. The development is well-modulated, particularly compared with adjoining and nearby buildings, and will positively contribute to the character of the lane way. The individual apartments are also of an appropriate scale, providing good amenity for future occupants of the development.

- *Principle 3: Density*

  Comment: The proposed development comprises 10 dwellings, inclusive of 4 x 1 bedroom apartments, 4 x 2 bedroom apartments and 2 x 3 bedroom apartments. The medium density development is consistent with the density anticipated within the zone, and within the Mona Vale Commercial Centre. The proposed density is considered to be the appropriate balance in consideration of the size of the footprint of the development, with an appropriate mix of apartment sizes and designs.

- *Principle 4: Sustainability*

  Comment: As discussed further with respect to the Apartment Design Guide and P21 DCP, the proposed shop top housing development is considered to be an appropriate design response in consideration of the context and orientation of the site. The majority of the apartments achieve natural cross ventilation and will receive adequate natural light, such that the amenity and livability of the apartments is high, without excessive reliance upon air-conditioning and artificial

lighting. The application was also supported by a BASIX Certificate to ensure that the development will be constructed and maintained in a manner that is consistent with relevant industry standards.

- *Principle 5: Landscape*

  Comment: The proposed landscape solution will appropriately soften the built form of the development as seen from Bungan Lane. Furthermore, the balcony landscaping on the eastern facade, combined with the larger elevated planter between the existing and proposed buildings on the site will actively to soften the appearance of the development as seen from the east. The proposed landscaping will also soften and screen the outlook from within the proposed apartments, which is considered to be of most importance within the commercial centre.

- *Principle 6: Amenity*

  Comment: The proposed apartments are appropriately sized, with well resolved layouts, and adequate access to natural ventilation and daylight. Although technically non-compliant with the solar access requirements of the ADG, the amount of cross-through apartments has been maximised and the dimensions of rooms and window openings will ensure that the spaces do not feel dark or enclosed. The proposal does not provide communal open space, however the individual areas of private open space meet or far exceed the minimum requirements prescribed.

- *Principle 7: Safety*

  Comment: The ground floor has been designed to provide a designated and accessible path of travel through the building, to the existing commercial premises fronting Pittwater Road. Whilst not evident in the detail provided at this stage, it is considered that adequate measures can be employed to maximise security through the mixed use site.

- *Principle 8: Housing Diversity and Social Interaction*

  Comment: The proposal provides a good mix of apartment sizes, with 2 apartments designed to meet the Silver Level design requirements of the *Liveable Housing Guideline*.

- *Principle 9: Aesthetics*

  Comment: The proposed development is well articulated, with an appropriate mix of colours and materials, and complemented by landscaping. The development will be a positive contribution to the Bungan Lane streetscape.

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

ADG Reference	Subclause	Criteria / Guideline	C	G	O
Part 3 Siting the Development					

Site Analysis	3A-1	Design decisions based on site analysis.	-	Y	Y
Orientation	3B-1	Layouts respond to the streetscape and optimise solar access.	-	Y	Y
	3B-2	Overshadowing of neighbouring properties is minimised during mid winter.	-	Y	Y
Public Domain Interface	3C-1	Transition between private and public places is achieved without compromising safety and security.	-	Y	Y
	3C-2	Amenity of the public domain is retained and enhanced.	-	Y	Y
Communal and Public Open Space	3D-1	Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	N	N	N
	3D-2	Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.	-	N	N
	3D-3	Communal open space is designed to maximise safety.	-	N	N
	3D-4	Public open space is responsive to the existing pattern and uses of the neighbourhood.	-	N	N
Deep Soil Zones	3E-1	Deep soil zones are to meet the following minimum requirements: Site area / Minimum dimensions / Deep soil zone (% of site area) Less than 650m² / - / 7% 650m² – 1,500m² / 3m Greater than 1,500m² / 6m Greater than 1,500m² with significant existing tree cover / 6m	N	Y	Y
Visual Privacy	3F-1	Minimum required separation distances from buildings to the side and rear boundaries are as follows:	N	Y	Y

		Building height / Habitable rooms and balconies / Non-habitable rooms Up to 12m (4 storeys) / 6m / 3m Up to 25m (5-8 storeys) / 9m / 4.5m Over 25m (9+ storeys) / 12m / 6m *Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.*			
	3F-2	Building design elements increase privacy without compromising access to light and air and balance outlook from habitable rooms and private open space.	-	Y	Y
Pedestrian Access and entries	3G-1	Entries and pedestrian access connects to and addresses the public domain.	-	Y	Y
	3G-2	Access, entries and pathways are accessible and easy to identify.	-	Y	Y
	3G-4	Large sites provide pedestrian links for access to streets and connection to destinations.	-	Y	Y
Vehicle Access	3H-1	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.	-	Y	Y
Bicycle and Car Parking	3J-1	Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.	-	Y	Y
	3J-2	Parking and facilities are provided for other modes of transport.	-	Y	Y
	3J-3	Car park design and access is safe and secure.	-	Y	Y
	3J-4	Visual and environmental impacts of underground car parking are minimised.	-	Y	Y
	3J-5	Visual and environmental impacts of on-grade parking are minimised.	-	Y	Y
	3J-6	Visual and environmental impacts of above ground enclosed car parking are minimised.	-	Y	Y
Part 4 Designing the Building					
Amenity					
Solar and Daylight Access	4A-1	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: 1. Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct	N	Y	Y

		sunlight between 9 am and 3 pm at mid winter. 2. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter			
	4A-2	Daylight access is maximised where sunlight is limited.	-	Y	Y
	4A-3	Design incorporates shading and glare control, particularly for warmer months.	-	Y	Y
Natural Ventilation	4B-1	All habitable rooms are naturally ventilated.	-	Y	Y
	4B-2	The layout and design of single aspect apartments maximises natural ventilation.	-	Y	Y
	4B-3	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by: 1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. 2. Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	N	Y	Y
Ceiling Heights	4C-1	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: Minimum ceiling height Habitable rooms: 2.7m Non-habitable: 2.4m If located in mixed used areas: 3.3m	N	Y	Y
	4C-2	Ceiling height increases the sense of space in apartments and provides for well proportioned rooms.	-	Y	Y
	4C-3	Ceiling heights contribute to the flexibility of building use over the life of the building.	-	-	-
Apartment Size and Layout	4D-1	Apartments are required to have the following minimum internal areas: **Apartment type** / **Minimum internal area** Studio: 35m² 1 bedroom: 50m² 2 bedroom: 70m² 3 bedroom: 90m²	Y	Y	Y

		The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.			
	4D-2	Habitable room depths are limited to a maximum of 2.5 x the ceiling height. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Y	Y	Y
	4D-3	Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space). Bedrooms have a minimum dimension of 3m (excluding wardrobe space). Living rooms or combined living/dining rooms have a minimum width of: - 3.6m for studio and 1 bedroom apartments - 4m for 2 and 3 bedroom apartments The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	Y	Y	Y
Private Open Space and Balconies	4E-1	All apartments are required to have primary balconies as follows: **Dwelling Type** / **Minimum Area** / **Minimum Depth** Studio apartments / 4m² / - 1 bedroom apartments / 8m² / 2m 2 bedroom apartments / 10m² / 2m 3+ bedroom apartments / 12m² / 2.4m For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.	Y	Y	Y
	4E-2	Primary private open space and balconies are appropriately located to enhance liveability for residents.	-	Y	Y
	4E-3	Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.	-	Y	Y

	4E-4	Private open space and balcony design maximises safety.	-	Y	Y
Common Circulation and Spaces	4F-1	The maximum number of apartments off a circulation core on a single level is eight.	Y	Y	Y
	4F-2	Common circulation spaces promote safety and provide for social interactions between residents.	-	Y	Y
Storage	4G-1	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: **Dwelling Type** / **Storage size volume** Studio apartments: 4m² 1 bedroom apartments: 6m² 2 bedroom apartments: 8m² 3+ bedroom apartments: 10m² At least 50% of the required storage is to be located within the apartment.	N	Y	Y
	4G-2	Additional storage is conveniently located, accessible and nominated for individual apartments.	-	Y	Y
Acoustic Privacy	4H-1	Noise transfer is minimised through the siting of buildings and building layout.	-	Y	Y
	4H-2	Noise impacts are mitigated within apartments through layout and acoustic treatments.	-	Y	Y
Noise and Pollution	4J-1	In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.	-	Y	Y
	4J-2	Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.	-	Y	Y
Configuration					
Apartment Mix	4K-1	A range of apartment types and sizes is provided to cater for different household types now and into the future.	-	Y	Y
	4K-2	The apartment mix is distributed to suitable locations within the building.	-	Y	Y
Ground Floor Apartments	4L-1	Street frontage activity is maximised where ground floor apartments are located.	-	-	-
	4L-2	Design of ground floor apartments delivers amenity and safety for residents.	-	-	-
Facades	4M-1	Building facades provides visual interest along the street while respecting the character of the local area.	-	Y	Y

	4M-2	Building functions are expressed by the facade.	-	Y	Y
Roof Design	4N-1	Roof treatments are integrated into the building design and positively respond to the street.	-	Y	Y
	4N-2	Opportunities to use roof space for residential accommodation and open space are maximised.	-	Y	Y
	4N-3	Roof design incorporates sustainability features.	-	Y	Y
Landscape Design	4O-1	Landscape design is viable and sustainable.	-	Y	Y
	40-2	Landscape design contributes to the streetscape and amenity.	-	Y	Y
Planting on Structures	4P-1	Appropriate soil profiles are provided.	-	Y	Y
	4P-2	Plant growth is optimised with appropriate selection and maintenance.	-	Y	Y
	4P-3	Planting on structures contributes to the quality and amenity of communal and public open spaces.	-	Y	Y
Universal Design	4Q-1	Universal design features are included in apartment design to promote flexible housing for all community members.	-	Y	Y
	4Q-2	A variety of apartments with adaptable designs are provided.	-	Y	Y
	4Q-3	Apartment layouts are flexible and accommodate a range of lifestyle needs.	-	Y	Y
Adaptive Reuse	4R-1	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	-	-	-
	4R-2	Adapted buildings provide residential amenity while not precluding future adaptive reuse.	-	-	-
Mixed Use	4S-1	Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.	-	Y	Y
	4S-2	Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents.	-	Y	Y
Awnings and Signage	4T-1	Awnings are well located and complement and integrate with the building design.	-	Y	Y
	4T-2	Signage responds to the context and desired street character.	-	-	-
Performance					
Energy Efficiency	4U-1	Development incorporates passive environmental design.	-	Y	Y
	4U-2	Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.	-	Y	Y
	4U-3	Adequate natural ventilation minimises the need for mechanical cooling.	-	Y	Y
Water Management and Conservation	4V-1	Potable water use is minimised.	-	Y	Y

	4V-2	Urban stormwater is treated on sit before being discharged to receiving waters.	-	Y	Y
	4V-3	Flood management systems are integrated into site design.	-	-	-
Waste Management	4W-1	Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.	-	Y	Y
	4W-2	Domestic waste is minimised by providing safe and convenient source separation and recycling.	-	Y	Y
Building Maintenance	4X-1	Building design detail provides protection from weathering.	-	Y	Y
	4X-2	Systems and access enable ease of maintenance.	-	Y	Y
	4X-3	Material selection reduces ongoing maintenance costs.	-	Y	Y

Detailed Assessment

3D Communal and Public Open Space

The proposed development does not comprise any communal open space, resulting in non-compliance with the design criteria of Objective 3D-1 of the *Apartment Design Guide,* which requires a communal area equal to 25% of the site. However, it is noted that non-compliance with this requirement is anticipated in certain circumstances, such as small sites and sites within business zones. The proposed non-compliance is not considered to compromise the amenity or livability of the development, noting that each apartment has private outdoor area/s of a size that meets or exceeds the minimum dimensions prescribed. Furthermore, the site is located opposite a large community park (Kitchener Park), which may be utilised by the occupants of the development for any open space requirements.

3E Deep Soil Zones

The proposed development does not provide any deep soil zones, inconsistent with the 7% minimum prescribed by the design criteria of Objective 3E-1 of the *Apartment Design Guide*. However, once again, this non-compliance is anticipated by the *Apartment Design Guide* in certain circumstances, including commercial centres and where non-residential uses are anticipated on the ground floor. Despite non-compliance in this regard, the proposal is still adequately landscaped and will appear appropriately 'green' and softened by vegetation.

3F Visual Privacy

The proposal has been designed with nil setbacks to the adjoining sites. This outcome is consistent with the setbacks prescribed by P21 DCP, however the nil setbacks are technically non-compliant with the spatial separation requirements prescribed by the design criteria of this objective. Furthermore, the rear of the proposed shop top housing development is located at a minimum distance of 5m from the existing building on the site, also inconsistent with the spatial separation distances prescribed.

The nil side setbacks to the adjoining sites allows for a continual facade to the lane way, and despite the lack of a setback, visual privacy is maximised for the proposed apartments without compromising the amenity of adjoining sites. Whilst the setback to the existing commercial building is not ideal, the spatial separation is considered to be adequate, given both the difference in levels between the two buildings, and the level of privacy attenuation measures proposed, which includes extensive

landscaping and screening devices.

4A Solar and Daylight Access

The proposal is inconsistent with the requirement of the design criteria of Objective 4A-1 of the *Apartment Design Guide*, which requires living rooms and private open space of at least 70% of the proposed apartments to receive a minimum of 2 hours of sunlight between 9am and 3pm in midwinter.

Whilst the shadow diagrams provided to support the application demonstrate that 8 of the 10 (80%) units will have direct sunlight to the windows associated with living rooms between 1pm and 3pm, the area of sunlight for Units 3, 5 and 7 at 1pm is not sufficient to provide benefit to the residents of the units, and as such, it is more realistic to say that these units will benefit from 1.5 hours of direct sunlight between 9am and 3pm in midwinter. As such, only 5 of the 10 (50%) units are considered to achieve compliance in this regard.

However, it is appreciated that 8 of the 10 (80%) units are cross-through apartments, with direct morning sun obtained to rooms on the eastern side of the dwellings. Furthermore, the units comprise expansive glazed surfaces and adequate ceiling heights such that the apartments will achieve adequate natural light, despite non-compliance with regard to direct sunlight. With this in mind, the proposal is considered to maximise sunlight to the proposed apartments, such that high levels of amenity with be achieved.

4C Ceiling Heights

The ceiling height of the proposed commercial tenancy is 2.7m, inconsistent with the 3.3m minimum recommended by Objective 4C-1 of the *Apartment Design Guide*. Despite non-compliance with the design criteria prescribed, the ceiling height is considered to be adequate in light of the limited depth and floor space of the commercial tenancy proposed. Furthermore, the ceiling height is not considered to limit the potential future uses or flexibility of the space, such that the intent of the larger ceiling height will still be achieved.

4G Storage

Whilst the proposal provides the necessary volume of storage required by the design criteria of Objective 4G-1 of the *Apartment Design Guide*, the proposed development does not provide 50% of the necessary storage area within individual apartments (in addition to storage in kitchens, bathrooms and bedrooms), resulting in inconsistency in this regard. However, the size of the robes proposed in each of the bedrooms exceeds the minimum size prescribed by the design guidance of Objective 4D-3, and as such, well designed and convenient storage is considered to be available to future occupants of the development.

SEPP (Infrastructure) 2007

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.

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:	13m	13.6m	4.6%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

and 4.6 Exceptions to development standards

The proposal is non-compliant with the 13m maximum building height prescribed by clause 4.3 of PLEP 2014. The maximum building height is a development standard, as defined by the *Environmental Planning and Assessment Act 1979* ('**EP&A Act**'), and as such, the provisions of clause 4.6 of PLEP 2014 can be applied.

Pursuant to clause 4.6(2) of PLEP 2014, consent may be granted for development even though the development would contravene a development standard prescribed by an environmental planning instrument. Whilst this clause does not apply to standards expressly excluded from this clause, the maximum building height is not expressly excluded and thus the clause can be applied in this instance.

Requirement:	13m
Proposed:	13.6m
Is the planning control in question a development standard?	YES
Is the standard expressly excluded from this clause?	NO
If numerical, enter a % variation to requirement	4.6%

Has the applicant's submission addressed the relevant criteria?

Pursuant to clause 4.6(4)(a) of PLEP 2014, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of PLEP 2014. The application was supported by a detailed submission (**attached**) addressing the provisions of clause 4.6 of PLEP 2014. The submission is considered with regard to the criteria of clause 4.6(3) of PLEP 2014, as follows:

- *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,*

  Comment: In accordance with the NSW LEC findings in the matter of Wehbe v Pittwater Council, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard. The applicant's submission has satisfactorily demonstrated that the proposal will achieve consistency with the objectives of the building height development standard, and as such, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this application.

- *that there are sufficient environmental planning grounds to justify contravening the development standard.*

  Comment: In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, "environmental planning grounds" were found to refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects prescribed by clause 1.3 of that Act. In this regard, the applicant's submission provides that minor breach promotes a better and more orderly planning outcome for the site, avoiding the need to include steps in the floor levels/plates of the three residential levels, which would otherwise be required as a consequence of the minor fall in the land. Furthermore, the statement demonstrates that, despite minor non-compliance with the maximum height prescribed, the proposed shop top housing development is of good design and amenity, the height of which is compatible with surrounding built form, consistent with the objects of the EP&A Act.

  With this in mind, it is considered that the applicant's justification for non-compliance, satisfactorily demonstrates that there are sufficient environmental planning grounds to justify contravention of the 13m maximum building height development standard.

Therefore, the consent authority can be satisfied that the applicant's written request has satisfactorily addressed the matters required by clause 4.6(3) of PLEP 2014.

Is the proposal in the public interest?

Under the provisions of clause 4.6(4)(a) of PLEP 2014, consent must not be granted to a proposal that contravenes a development standard unless that proposed development (as a whole) will be in the public interest because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is to be carried out.

The proposal is considered to be consistent with the objectives of the building height development standard, as follows:

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

  Comment: The desired future character statement for the Mona Vale locality prescribes that the scale of new development is to reflect principles of good design and that the height of new buildings is to be maintained below tree canopy.

  The scale of the proposed development is well articulated and, as evident in the assessment further in this report, consistent with the outcomes and objectives of the relevant built form controls in P21 DCP and the Apartment Design Guide. The height of the development will also sit below the height of significant trees within the vicinity of the site, and those proposed at the rear of the proposed building. As such, the height and scale of the proposed development is considered to be consistent with the desired future character of the Mona Vale locality.

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

  Comment: The height and scale of buildings within the Mona Vale Commercial Centre are varied, as exemplified by the single storey post office building to the south-east of the site and the multi-storey office tower to the south-west of the site. However, it is noted that the majority of recent shop top housing developments in the vicinity of the site have a four storey presentation to the public domain. In this regard, the height and scale of the proposed four storey shop top housing development is considered to be compatible with that of other development within the Commercial Centre.

  More specifically, as evident in the elevations provided to support the application, the height and scale of the proposed development appears to align with that of adjoining development such that the development will not be incompatible with immediately adjoining buildings, in so far as the development will not be jarring or at odds with surrounding built form.

- *to minimise any overshadowing of neighbouring properties,*

  Comment: The proposed development does not result in any unreasonable impacts upon adjoining properties with regard to overshadowing.

- *to allow for the reasonable sharing of views,*

  Comment: The proposed development provides for the reasonable sharing of views, in so far as the proposal will not unreasonably impact upon views from public/private places.

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

Comment: This objective is not considered to be entirely relevant with respect to the B4 zoning of the site. However, the proposed development is considered to have an appropriate response to the topography of the site, in so far as the proposal adopts an increased setback to the rear of the upper floor, so that the building has the appearance of stepping down the site.

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

  Comment: The development is not within the visual catchment of any heritage conservation areas or heritage items, and the visual impact of the proposal has been well resolved, such that the resultant development will not have any adverse impacts upon the natural environment.

Further, the proposal is considered to be consistent with the objectives of the B4 Mixed Use Zone, as follows:

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

  Comment: The proposed shoptop housing development is anticipated within the B4 Mixed Use Zone and will complement the existing mix of buildings and land uses in the vicinity of the site. The proposal will not be incompatible with surrounding development.

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

  Comment: Located within the Mona Vale Commercial Centre, the development is located within walking distance of a variety of shops, services, and bus stops which will actively encourage walking and promote the use of public transport. Furthermore, the ground floor has been designed to both activate the laneway and facilitate pedestrian connectivity through the site to connect to Pittwater Road.

- *To strengthen the role of Mona Vale as a centre of employment in Pittwater.*

  Comment: The proposal maintains and enhances the amount of commercial floor space on the site, providing further employment opportunities within the Mona Vale Commercial Centre,

- *To provide healthy, attractive, vibrant and safe mixed use areas.*

  Comment: The proposed will significantly improve the amenity of Bungan Lane, providing much need activation and softening of the street frontage.

- *To provide an active day and evening economy.*

  Comment: The commercial floor space ensures continual activity on the site during the day, whilst the apartments provide occupants who will activate the site at night.

- *To provide for residential uses above ground level, where they are compatible with the characteristics and uses of the site and its surroundings.*

  Comment: The proposed shoptop housing development, in particular the dwellings in the upper levels of the site, are compatible with the characteristics and uses of the site and its surrounds.

- *To encourage retail vitality and provide a high level of amenity for pedestrians and cyclists.*

  Comment: As above, the proposed additional commercial tenancy is considered to contribute to enhanced vitalisation and amenity of Bungan Lane.

Therefore, the consent authority can be satisfied that the proposal is in the public interest.

Has concurrence been obtained?

Pursuant to clause 4.6(4)(b) of PLEP 2014, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary as been obtained. In accordance with Planning Circular PS 18-003 (dated 21 February 2018) issued by the NSW Department of Planning, the Secretary's concurrence may be assumed in this instance as the application relates to a development standard within an EPI that adopts clause 4.6 of the Standard Instrument.

Conclusion

Overall, the consent authority can be satisfied of the matters prescribed by clause 4.6 of PLEP 2014, and the proposal can be supported, despite contravention of the building height development standard.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	3.5m, 6.0m	0.7m	80%, 88%	No
Rear building line	-	-	-	-
Side building line	Nil	Nil	-	Yes
	Nil	Nil	-	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 x 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
A4.9 Mona Vale Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B2.6 Dwelling Density and Subdivision - Shop Top Housing	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	N/A	N/A
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	N/A	N/A
B3.13 Flood Hazard - Flood Emergency Response planning	N/A	N/A
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.1 Water Management Plan	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	Yes
B6.7 Transport and Traffic Management	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
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	No	Yes
C1.4 Solar Access	No	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	No	Yes
C1.15 Storage Facilities	Yes	Yes
C1.18 Car/Vehicle/Boat Wash Bays	Yes	Yes
C2.1 Landscaping	No	Yes
C2.2 Safety and Security	No	Yes
C2.3 Awnings	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C2.5 View Sharing	Yes	Yes
C2.6 Adaptable Housing and Accessibility	Yes	Yes
C2.9 Waste and Recycling Facilities	No	Yes
C2.10 Pollution Control	Yes	Yes
C2.12 Protection of Residential Amenity	Yes	Yes
C2.16 Undergrounding of Utility Services	Yes	Yes
C2.20 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C2.22 Plant, Equipment Boxes and Lift Over-Run	No	Yes
D9.1 Character as viewed from a public place	Yes	Yes
D9.2 Scenic protection - General	Yes	Yes
D9.3 Building colours and materials	Yes	Yes
D9.6 Front building line	No	Yes
D9.7 Side and rear building line	Yes	Yes
D9.16 Character of the Public Domain - Mona Vale Commercial Centre	Yes	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

Existing commercial development (GFA 1014m²):

- 22 x commercial parking spaces, inclusive of 1 parking space for people with disabilities.

Demand associated with proposed shop top housing development:

- 2 x commercial parking spaces, inclusive of 1 parking space for people with disabilities.

- 16 x residential parking spaces,
- 4 x residential visitor parking spaces, inclusive of 1 parking space for people with disabilities, and
- 1 x car wash bay.

Proposed parking arrangement:

- 24 x commercial parking spaces, inclusive of 1 parking space for people with disabilities (compliant),
- 16 x residential parking spaces (complaint), and
- 2 x residential visitor spaces, inclusive of 1 car wash bay (non-compliant).

The proposed development is non-compliant with respect to the residential visitor parking, falling 2 spaces short of the minimum prescribed by this control, inclusive of 1 x parking space for people with

disabilities. However, the requirement for 1 visitor parking space per 3 residential units (rounded up) applies equally for residential flat buildings and multi-unit housing developments, which do not have the benefit of publicly accessible retail parking that can also be used by residential visitors to the site. In the circumstances of the proposed development, residential visitors may also park in the 24 commercial parking spaces on site, and as such, the shortfall is considered to be reasonably absorbed by other publicly accessible parking provided by the development.

Furthermore, it is noted that the development is located immediately adjacent to a public car park, and is in the vicinity of a number of other public and private car parks, such that shortfall will not unreasonably impact upon parking within the Mona vale Commercial Centre. Overall, the proposed parking arrangement is considered to be safe and convenient, with an adequate number of parking spaces available to meet the demand generated by the resultant development. As such, despite technical non-compliance, the proposal is consistent with the outcomes of this development control and supportable in this regard.

Conditions of consent are recommended to ensure:

- all spaces are allocated in accordance with the plans provided to support the application, and
- all 24 x commercial parking spaces are accessible to the public (ie: the parking area should not be enclosed by a garage/security door).

B8.4 Construction and Demolition - Site Fencing and Security

The proposed shop top housing development is to be located in the area of the site currently occupied by the at-grade parking area for the existing commercial premises, and as such, the existing commercial premises will have no on-site parking during construction and no pedestrian access to/from Bungan Lane. To mitigate this impact, the applicant has obtained owners consent for temporary access over the adjoining property at 1749 Pittwater Road, providing direct pedestrian access to the adjoining public car park and through to Bungan Lane. The short term impact upon parking within Mona Vale Commercial Centre during construction is not considered to be unreasonable, and no concerns have been raised in this regard by the public, adjoining properties owners or Council's engineering and traffic referral bodies.

C1.1 Landscaping

and C2.1 Landscaping

Clauses C1.1 and C2.1 of P21 DCP require a minimum landscaped area of 350m² (35m² per dwelling) to be provided at the ground level of the site. The proposed development provides a landscaped area of 21m² at the ground level of the site, well short of the minimum landscaped area prescribed.

However, in comparison to other adjoining development, the proposal will appear comparably green and well landscaped, with additional landscaping provided on the upper residential levels on both the front facade and in the centre of the site. Subject to conditions of consent requiring the landscaped areas to be irrigated and maintained by the body corporate of the resultant development, the proposal will be consistent with the relevant objectives of these clauses, as follows:

- *A built form softened and complemented by landscaping*

  Comment: A combination of palms and ground covers are provided at ground level fronting Bungan Lane, with planters provided on each of the 3 upper residential levels, featuring plants

that will both cascade over the balustrade and grow up the trellises proposed. Furthermore, additional landscaping is proposed on the rear facade of the shop top housing development, with a large elevated planter accommodating canopy that will provide a vegetated break between the built form. Overall, the proposed built form is considered to be adequately softened and complemented by landscaping.

- *Landscaping that reflects the scale and form of development*

  Comment: The proposed landscaping is considered to adequately reflect the scale and form of the proposed shop top housing development, within the context of the B4 Mixed Use zone.

C1.4 Solar Access

The proposal is inconsistent with the provisions of this clause, which require a minimum of 3 hours of direct sunlight to areas of private open space and windows associated with living rooms of each dwelling between 9am and 3pm in midwinter. However, these requirements differ from those prescribed in the Apartment Design Guideline, and in accordance with clause 6A(2) of SEPP 65, these requirements are of no effect. See further discussion with regard to solar access in the the SEPP 65 discussion, above.

C1.12 Waste and Recycling Facilities

and C2.9 Waste and Recycling Facilities

Over the course of the assessment of this application, P21 DCP was amended with respect to the controls relating to waste management. At the time of lodgement, clauses C1.12 and C2.9 of P21 DCP required:

- waste and recycling bins to be stored within the property boundaries (compliant),
- separate bins for waste, paper recyclables and container recyclables (compliant),
- for the bin enclose / waste room to be designed to meet certain design criteria and integrated into the building (compliant), and
- for the residential waste room to be separate from the commercial waste room (compliant).

On 20 October 2018, Amendment 24 of P21 DCP came into force, which changed the provisions of clauses C1.12 and C2.9 of P21 DCP to require compliance with Northern Beaches Council's *Waste Management Guidelines*. These guidelines differ from those identified above, and require:

- the bin room for residential development to be located a maximum of 6.5m from the front boundary (non-compliant),
- a bulk store waste room to be located adjacent to the residential bin store room (non-compliant), and
- for a garbage truck to be able to enter the site to collect the waste (non-compliant).

With the exception of the ability for a garbage truck to enter the site, the applicant has nonetheless tried to accommodate these requirements within the proposal, with a bin room located in close proximity to the front setback and a separate bulk waste room in the basement. Council's Waste Officer has since confirmed that the design and location of the bin room and bulk store waste room is acceptable and can be serviced by Council's waste contractors, subject to the removal of the proposed open grille gate in

the lobby and the provision of a time specific loading bay in front of the property. As such, a condition of consent is recommended in this regard, with a further condition to require the commercial waste to be collected by a private contractor.

C2.2 Safety and Security

The proposed development is technically non-compliant with the provisions of this clause, which require separate entries for the residential and retail component of the development. Whilst the proposed new commercial area fronting Bungan Lane can be accessed independently, the residential lobby also acts as a pedestrian thoroughfare to the existing commercial development fronting Pittwater Road, and provides access to the commercial parking and visitor bathroom in the basement below (via the stairs and lift). The application has not been supported by any detail as to how the site is to maximise safety for residents whilst maintaining adequate public access, and as such the following recommendations are made to ensure consistency with the outcomes of this control:

- Access to the 24 x commercial parking spaces must not be restricted, and
- The open grill gates at the eastern and western ends of the ground floor lobby are to be removed.

These recommendations have been included as conditions within the draft determination, attached.

C2.3 Awnings

The proposal does not comprise awnings that extend over the adjacent footpath, resulting in inconsistency with the provisions of this clause. The incorporation of an awning is somewhat restricted by virtue of the existing electricity substation in the western corner of the site and by the proposed landscaping, which is required under the provisions of clauses C1.1 and C2.1 of P21 DCP. Noting that the majority of the footpath along Bungan Lane is uncovered, including the section adjacent to the comparably recently constructed public car park, the lack of an awning is not considered to be a detrimental outcome that would warrant the refusal of the subject application.

C2.22 Plant, Equipment Boxes and Lift Over-Run

The lift over-run protrudes beyond the roof plane, inconsistent with the provisions of this control that require lift over-runs to be integrated internally into the design fabric of the building. The Applicant has since confirmed that the extent of the lift over-run as shown on the architectural plans (approximately 600mm) is greater than required, and additional detail has been provided to demonstrate that the lift over-run can be reduced to 200mm. A 200mm protrusion, finished in the same colour/finish as the roof, will not be seen from the public domain and will not have an unacceptable visual impact as seen from up-slope/taller adjoining buildings. As such, the proposal is considered to meet the outcomes of this control which aim to reduce visual clutter, preserve views and minimise bulk and scale, such that the minor non-compliance is considered to be acceptable on merit.

D9.6 Front building line

Minimum front setback prescribed: 3.5m at ground level up to 8.49m in height, then 6m to that part of the building 8.5m and greater above ground (existing).

Proposed setbacks: ground level: 2.5m

first floor: 3.5m - 5.5m to external walls, 0.7m - 3.0m to
second floor: 3.5m - 5.5m to external walls, 0.7m - 3.0r
third floor: 6m to external walls, 0.7m - 3.0m to balconi

The facade of the ground floor and the balconies of the upper levels are non-compliant with respect to minimum front setback prescribed by this control. However, the control provides a variation to the minimum setback prescribed in consideration of both established building lines and secondary street frontages, where it can be demonstrated that the outcomes of the control are achieved. The application of a variation is considered to be warranted in the circumstances of this application, as the proposal is considered to achieve consistency with the relevant outcomes of the front building line control, as follows:

- *Achieve the desired future character of the Locality.*

  Comment: The desired future character statement for Mona Vale Locality prescribes that the the design, scale and treatment of future development within the Mona Vale Commercial Centre will reflect principals of good urban design. In this regard, it is noted that the *Apartment Design Guide* identifies that the street setback or building line of a building within a town centre should be set at the boundary to achieve a continuous plane with adjoining developments, with areas of articulation introduced to provide landscaping, where necessary. With this in mind, the proposed setbacks to Bungan Lane are considered to represent an appropriate balance for the site, consistent with the desired future character of the locality, noting the nil setbacks of all other developments along the street.

- *Equitable preservation of views and vistas to and/or from public/private places.*

  Comment: The areas of technical non-compliance, specifically the balconies fronting Bungan Lane, will not unreasonably impact upon views and vistas to/from public/private places.

- *Vegetation is retained and enhanced to visually reduce the built form.*

  Comment: An appropriate level of landscaping is proposed along the Bungan Lane frontage in consideration of the mixed use zoning of the site.

- *Vehicle manoeuvring in a forward direction is facilitated.*

  Comment: Vehicles can enter and exit the site in a forward direction.

- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*

  Comment: The proposed development will result in a significant improvement to the existing character of Bungan Lane. Noting the developed nature of the laneway, and the commercial centre as a whole, the proposal is not appropriately considered/compared with respect to the height of the natural environment but rather the existing and desired urban environment. In this regard, the proposal is considered to be of an appropriate height and scale with respect to the context of the site.

- *To encourage attractive street frontages and improve pedestrian amenity.*

  Comment: The proposed Bungan Lane facade is well modulated and appropriately softened by landscaping, and pedestrian amenity will be improved by further activation of the laneway.

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

Comment: A nil setback has been established with regard to all buildings on both sides of Bungan Lane, with increased setbacks to upper floors seen on the buildings fronting Mona Vale Road. However, it is noted that the proposed development will be the first development with a residential component fronting Bungan Lane, and as such, it is appreciated that the treatment of the street facade is not entirely comparable to the adjoining buildings. With this in mind, the proposed setbacks to Bungan Lane are considered to appropriately respond to, reinforce and sensitively relate to the spatial characteristics of the existing and desired mixed use, urban environment.

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

The proposed development is likely to increase the demand for public amenities and services within the area. Accordingly, suitable conditions have been included requiring payment of a development contribution of $200,000 (10 x $20,000) in line with the *Pittwater Section 94 Contribution Plan for Residential Development*.

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 DA2018/1113 for Construction of a Shop Top Housing development and strata subdivision on land at Lot 1 DP 715158, 1753 Pittwater Road, MONA VALE, 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 & Landscape Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
Site Plan DA.01, revision B	23 October 2018	Gartner Trovato Architects
Lower Basement Floor DA.02, revision C	1 November 2018	Gartner Trovato Architects
Basement Floor DA.03, revision C	1 November 2018	Gartner Trovato Architects
Ground Floor DA.04, revision C	1 November 2018	Gartner Trovato Architects
First Floor DA.05, revision C	1 November 2018	Gartner Trovato Architects
Second Floor DA.06, revision B	23 October 2018	Gartner Trovato Architects
Third Floor DA.07, revision B	23 October 2018	Gartner Trovato Architects
Elevations NW & SE DA.08, revision B	23 October 2018	Gartner Trovato Architects
Elevations NE & SW DA.09, revision B	23 October 2018	Gartner Trovato Architects
Section A-A DA.10, revision B	23 October 2018	Gartner Trovato Architects

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
Stormwater Management Plans SW1 and SW2	20 June 2018	Barrenjoey Consulting Engineers Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Geotechnical Risk Management Report,	29 May 2018	Crozier Geotechnical

reference 2018-083		Consultants
BCA Compliance Report, reference 109405-BCA-r1	20 June 2018	BCA Logic Pty Ltd
Access Report, reference 109405-Access-r1	20 June 2018	BCA Logic Pty Ltd
BASIX Certificate 937764M	26 June 2018	Gartner Trovato Architects

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

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

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

2. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

- the open grill gates at the eastern and western ends of the ground floor lobby are to removed.
- the lift overrun is not to extend above RL22.15m AHD.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

3. **Approved Land Use**
Nothing in this consent shall authorise the use of ground floor tenancy as detailed on the approved plans for any land use beyond the definition of a retail premises, as defined by *Pittwater Local Environmental Plan 2014*.

Reason: To ensure compliance with the terms of this consent.

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

demolition work is being carried out, but must be removed when the work has been completed.

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative Requirement

5. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

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

(i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(j) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

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

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.

7. **Construction, Excavation and Associated Works Bond (Crossing / Kerb)**
A bond of $10,000.00 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter and full width footpath works required as part of this consent.

Reason: Protection of Council's infrastructure.

8. **Contributions**
A contribution of $200,000 ($20,000 per additional dwelling or allotment) is payable to Northern Beaches Council for the provision of public infrastructure and services pursuant to the Pittwater Section 94 Contributions Plan for Residential Development. The contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate (whichever occurs first) or prior to the issue of the Subdivision Certificate where no Construction Certificate is required.

The proponent may negotiate with Council for the direct provision of facilities and services specified in the Contributions Plan, the dedication of land or another material public benefit in lieu of full or partial payment of the monetary contribution. Any agreement shall be in accordance with the Pittwater Section 94 Contributions Plan for Residential Development. The agreement must be finalised, formally signed and in place prior to payment being due.

The Pittwater Section 94 Contributions Plan for Residential Development may be inspected at Council's Mona Vale office, 1 Park Street Mona Vale or on Council's website.

Cashier Codes:
SOPS – $80,000 ($8,000 per additional dwelling or allotment)
SLEL – $20,000 ($2,000 per additional dwelling or allotment)
SCSF – $35,000 ($3,500 per additional dwelling or allotment)
SVSS – $65,000 ($6,500 per additional dwelling or allotment)

Reason: To provide for contributions in accordance with Council's Development Contributions

Plan.

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

9. **Geotechnical Report Recommendations have been 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 Crozier Geotechnical Consultant (2018-083) dated 28th May 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. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **Fire Safety Engineering Assessment Report - Egress**
Prior to issue of the construction certificate, a Fire Safety Engineering Assessment Report is to be prepared addressing the adequacy of the existing rear exit path from the *'PRP Building'* that travels through the carpark of the proposed development (the subject of this Consent). This report is to provide a satisfactory solution, so the exit from the adjacent building (currently known as the '*PRP building'),* is adequately addressed so as to ensure Building Code of Australia Egress compliance is achieved.

The Construction Certificate is not to be issued for any part of the works on site until this matter is adequately resolved and an agreed solution achieved.

Reason: To ensure adequate provision is made for fire safety, occupant safety, egress and access in the buildings for building occupants.

11. **Stormwater Disposal**
Stormwater shall be disposed of to an existing approved system or in accordance with *Pittwater 21 Development Control Plan* and generally in accordance with the approved Stormwater Management Plans referenced in this consent. The stormwater discharge from the development must be piped and connected to the nearest Council's piped and pit drainage system.

A certificate is to be provided to the Principal Certifying Authority with the construction certificate application by a qualified experienced 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 existing approved system can accommodate the additional flows or provide drainage plans demonstrating compliance with Council's requirements.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority for approval prior to the issue of the construction certificate.

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

12. **Submission Roads Act Application for Civil Works in the Public Road**

An Application for Works to be approved within Council Roadway, including engineering plans is to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The application is to include four (4) copies of Civil Engineering plans for the design of the full width fronting Bungan Lane, drainage and driveway crossing. The Full width footpath shall match with existing footpath to the north of the development. The plan shall be prepared by a qualified structural engineer. The design must include the following information:

- The vehicular crossing and footpath path must be graded to the lay back.
- Detail of the proposed pipe connection to Council piped drainage system.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. An approval is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To provide public and private safety.

13. **Structural Adequacy and Excavation Work**
Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:
(a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.
Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

14. **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. A Temporary Ground Anchors (Road Reserve) Application is to be submitted with Council for assessment and approval subject to Council's Fees and Charges. 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.

15. **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

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

The design and controls addressed in the Sediment and Erosion Management Plan must comply with the criteria identified in:

- The document "Managing Urban Stormwater: Soils and Construction" Volume 1, 2004.

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

17. **Detailed Landscape Plan**
A detailed landscape plan, consistent with the plantings shown on the Approved Architectural and Landscape Plans referenced in this consent, is to be prepared to demonstrate:

- the exact amount and location of individual plantings for all planters proposed,
- the incorporation of 3 x semi-mature Livistona australis palms (1 at the frontage to Bungan Lane and 2 in the elevated planter in the centre of the site), with a minimum height of 3m when planted,
- the incorporation of at least 6 shrubs in the elevated planter in the centre of the site, with a minimum maturity height of 2m, with a minimum pot size of 25L,
- the proposed method of waterproofing to all internal walls and slab, and drainage of the concrete slab over which soil and planting is being provided, and
- the proposed soil volume, soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The detailed landscape plan is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure a suitable landscaped outcome for the site.

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

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

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

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

Please refer to the website www.sydneywater.com.au for:
- Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing

and Plumbing then Building and Renovating.
- Or telephone 13 20 92.

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

20. **External colours and finishes**
A schedule of external colours and finishes is to be produced to demonstrate consistency with the following:

- the use of red or white is not permitted,
- the roof is to be finished in a colour equivalent to or darker than Colorbond 'Woodland Grey',
- the lift overrun, and any other element on the roof, is to be finished in the same colour as the roof,
- where the side boundary walls extend past or above existing structures on adjoining sites, the outer face of the side wall is to be rendered and finished in a colour equivalent to or darker than Colorbond 'Woodland Grey', and
- the louvre screens shown on the Approved Plans are to be operative and are to comprise non-reflective, vertical aluminium panels/louvres.

Details demonstrating compliance with these requirements are to be provided to the certifying authority prior to the issuance of a construction certificate.

Reason: To ensure an appropriate visual outcome from the development and to minimise nuisance from glare from properties up slope.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

22. **Vehicle Crossings**
The provision of vehicle crossing 5.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

23. **Construction/Demolition/Excavation**
In order to maintain the amenity of adjoining properties, all work, including demolition, excavation and building work, and activities in the vicinity of the site generating noise associated with preparation for the commencement of work (e.g. loading and unloading of goods, transferring of tools etc.) in connection with the proposed development must be restricted to the hours between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday (including works undertaken by external contractors). No site works are permitted on Sundays or public holidays.

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

Noise must be controlled in accordance with the requirements of the Protection of the Environment Operations Act 1997 and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

Reason: To prevent disturbance to the surrounding community.

24. **Amenity**
The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, ash, dust, waste water, waste products, grit, oil or other harmful products.

Reason: To ensure the surrounding area and people within the neighbourhood are not affected adversely and to ensure compliance with the *Protection of the Environment Operations Act 1997*.

25. **Requirement to notify about new contamination evidence**
Any new information revealed during demolition works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.

Reason: To protect human health and the environment.

26. **Acid Sulfate Soil Management**
Any new information which comes to light during remediation, excavation or construction works which has the potential to alter previous conclusions about the uncovering of Acid Sulfate Soil must be notified to the Certifier as soon as reasonably practicable. This will also require an Acid Sulfate Soil Management Plan, including disposal of affected soil to an approved facility, to be submitted to the certifier, before work continues.

Reason: To ensure potential Acid Sulfate Soil is appropriately managed.

27. **Pedestrian access during construction**
Temporary pedestrian access, including a line-marked walkway, is to be provided to/from the rear of the existing commercial tenancy and through the adjoining property at 1749 Pittwater Road to provide access to Council's car park. This temporary access arrangement is to be removed upon completion of the construction works.

Reason: To retain appropriate access to the building to the retained on the site during

construction.

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

28. **Landscape completion certification**
Landscaping is to be implemented in accordance with the amended detailed landscape plan required by this consent.
a) Prior to the issue of any 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 amended detailed landscape plan required by this consent and inclusive of any conditions of consent.
b) Prior to the issue of any 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 established and maintained in accordance with the amended detailed landscape plan required by this consent.

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

29. **Landscape Maintenance**
Evidence of an agreement for the maintenance of all plants for a period of twelve (12) months from the date of practical completion of the building is to be provided to the Principal Certifying Authority prior to issue of the final Occupation Certificate.

Reason: To ensure landscaping will be appropriately maintained.

30. **Authorisation of Legal Documentation Required for Onsite Detention**
The original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To create encumbrances on the land.

31. **Registration of Encumbrances for On-site Stormwater Detention**
A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land.

32. **Positive Covenant for the Maintenance of Stormwater Pump-out Facilities**
A Positive Covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the property title to ensure the on-going maintenance of the stormwater pump-out facilities on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Details demonstrating compliance are to be submitted to the Principal

Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard

33. **Positive Covenant and Restriction as to User for On-site Stormwater Detention**
A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.
Reason: To ensure the on-site detention and/or pump system is maintained to an appropriate operational standard.

34. **Geotechnical Certification Prior to Occupation Certificate**
Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy is to be completed and submitted to the Principal Certifying Authority.

Reason: To ensure geotechnical risk is mitigated appropriately.

35. **Access Certification**
A suitably qualified accessibility consultant is to provide certification that the as-built development achieves the recommendations of the approved Access Report referenced in this consent and the following:

- Units 01 and 05, and access thereto, have been built in accordance with the Silver Level of the *Livable Housing Deign Guidelines,* and
- An accessible and unimpeded path of travel is provided through the ground floor (between the existing development and Bungan Lane), and to each level of the development

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

Reason: To ensure that the development is appropriately accessible.

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

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

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

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

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website (https://www.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/unit-numbering-multi-unit-developments-residential-commercial-and-industrial-form/unit-numbering-multi-unit-developments-residential-commercial-and-industrial-form.pdf).

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

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

Details are to be submitted with any Interim/Final Occupation Certificate certifying that the numbering has been implemented in accordance with this condition.

Reason: To ensure consistent numbering for emergency services access.

38. **Undergrounding of Services**
All services connecting to the site are to be located underground.

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

Reason: To reduce visual clutter.

39. **Sydney Water**
A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <http://www.sydneywater.com.au> then refer to “Water Servicing Coordinator” under “Developing Your Land” or telephone 13 20 92 for assistance.

Following application a “Notice of Requirements” will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

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

40. **Fire Safety Matters**
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 Fire and Rescue NSW.

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 Fire and Rescue NSW, 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.

41. **Loading Zone**
A time-restricted loading zone is to be provided at the Bungan Lane frontage of the site, to provide for residential waste collection by Council's waste contractors and deliveries to the site and adjoining properties between 8am and 6pm.

Reason: To ensure that the site can be appropriately serviced, without restricting vehicular access to the site and along the lane way.

42. **External colours and finishes**
The project architect is to confirm that the external finishes of the as-built development are consistent with the external schedule of colours and finishes required by this consent.

Reason: To ensure that the development is completed in accordance with this development consent.

43. **Car Wash Bay Certification**
A suitably licenced plumber is to provide certification that a car wash bay has been provided on the site, in accordance with all relevant conditions of this consent.

Reason: To ensure consistency with this development consent.

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

Reason: To ensure ongoing access for servicing of waste facilities.

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

45. **Landscape Maintenance**

Any existing landscaping required to be retained together with all landscaping required by this Consent is to be maintained by the Owners Corporation/Body Corporate of the resultant development for the life of the development.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the amended detailed landscape plan required by this consent.

Reason: To maintain local environmental amenity and ensure landscaping continues to soften the built form.

46. **Environmental and priority weed control**
Condition: All weeds are to be removed and controlled in accordance with the Biodiversity Conservation Act 2016.

Reason: Preservation of environmental amenity.

47. **Noise Impact on Surrounding Areas**
Any noise from the retail premise shall not exceed more than 5dB(A) above the background level when measured from within any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy and any appropriate legislation to prevent offensive noise.

Reason: To ensure that noise generated from the premise does not create offensive noise.

48. **Mechanical ventilation system - DA required**
Should the retail component of the premises require a kitchen exhaust or mechanical ventilation system, no works in relation to the installation or operation of the system shall be undertaken prior to the submission of a development application to Council for approval to install, operate and use a mechanical ventilation system at the site.

Reason: To ensure consistency with this development consent.

49. **Hours of operation for use of the Commercial/Retail component of the development**
Hours of operation for the retail component of the development are to limited to between 7am and 6pm, 7 days.

Reason: To minimise impacts associated with the retail use on the site.

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

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

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

51. **Commercial Waste and Recycling Storage**
Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins as shown on the approved plans.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed.

52. **Commercial Waste Collection**
Waste and recyclable material, generated by the retail and commercial premises at the site, are to be collected by a private waste collector and must not be collected between the hours of 6pm and 8am on any day.

Reason: To ensure the acoustic amenity of surrounding properties.

53. **Parking and Access Requirements**
The following parking and access arrangements/requirements are to be maintained for the life of the development:

- residential parking spaces and basement storage areas are to be allocated/subdivided in accordance with the allocation shown on the Approved Plans referenced in this consent,
- all 24 x commercial/retail parking spaces are to be accessible to the public at all times, and
- accessible public access is to be maintained through the ground floor and to/from all 24 x commercial/retail parking spaces at all times.

Reason: To ensure consistency with the development consent and maintain appropriate public access to the commercial/retail components of the development.

54. **Plant Equipment**
No plant equipment, including exhaust systems, hot water systems and air-conditioning units are permitted on the roof or in any location where they will be visible from the public domain.

Reason: To ensure that the visual impact of the development is appropriately minimised.

55. **External colours and finishes**
The development is to maintain consistency with the schedule of external colours and finishes required by this consent.

Reason: To minimise the visual impact of the development.

56. **Car Wash Bay**
A car wash bay is to be provided on site, that is suitably bunded and drained to the sewer. The car wash bay is to be within easy access to a tap fitting to facilitate car washing of residents vehicles.

Reason: to ensure that a suitably designed car wash bay is provided on the site.

DEVELOPMENT APPLICATION FOR SHOP TOP HOUSING
LOT 1 / 1753 PITTWATER RD, MONA VALE

VIEW FROM BUNGAN LANE

VIEW OF REAR FROM EAST

DEVELOPMENT APPLICATION DRAWING LIST	
DWG No:	**DESCRIPTION**
DA.00	COVER PAGE
DA.01	SITE PLAN & SITE ANALYSIS
DA.02	LOWER BASEMENT FLOOR
DA.03	BASEMENT FLOOR
DA.04	GROUND FLOOR
DA.05	FIRST FLOOR
DA.06	SECOND FLOOR
DA.07	THIRD FLOOR
DA.08	ELEVATIONS - NW & SE
DA.09	ELEVATIONS - NE & SW
DA.10	SECTION A-A
DA.11	EXTERNAL FINISHES_PHOTOMONTAGE

WINDOW SCHEDULE				
Full Element ID	**Width**	**Height**	**Sill Height**	**WINDOW TYPE**
SK-01	2000 x 600			FIXED SKYLIGHT
W1-01	5,200	2,400	0	SLIDING DOOR; LOUVRE
W1-02	1,900	2,400	0	LOUVRE; FIXED
W1-03	1,350	2,400	0	SLIDING DOOR; LOUVRE
W1-04	2,900	2,400	0	SLIDING DOOR; LOUVRE
W2-01	3,700	2,400	0	SLIDING DOOR; LOUVRE
W2-02	2,950	2,400	0	SLIDING DOOR; LOUVRE
W3-01	3,000	1,200	1,200	LOUVRE; FIXED
W3-02	2,990	2,400	0	SLIDING DOOR; LOUVRE
W3-03	3,090	2,400	0	SLIDING DOOR; LOUVRE
W3-04	2,050	2,400	0	SLIDING DOOR; LOUVRE
W3-05	1,350	1,700	700	LOUVRE; FIXED
W4-01	2,400	1,600	800	LOUVRE; FIXED
W4-02	3,700	2,400	0	SLIDING DOOR; LOUVRE
W5-01	5,200	2,400	0	SLIDING DOOR; LOUVRE
W5-02	1,900	2,400	0	LOUVRE; FIXED
W5-03	1,350	2,400	0	SLIDING DOOR; LOUVRE
W5-04	2,900	2,400	0	SLIDING DOOR; LOUVRE
W6-01	3,700	2,400	0	SLIDING DOOR; LOUVRE
W6-02	2,950	2,400	0	SLIDING DOOR; LOUVRE
W7-01	3,000	1,200	1,200	LOUVRE; FIXED
W7-02	3,000	2,400	0	SLIDING DOOR; LOUVRE
W7-03	3,090	2,400	0	SLIDING DOOR; LOUVRE
W7-04	2,050	2,400	0	SLIDING DOOR; LOUVRE
W7-05	1,350	1,700	700	LOUVRE; FIXED
W8-01	2,400	1,600	800	LOUVRE; FIXED
W8-02	3,700	2,400	0	SLIDING DOOR; LOUVRE
W9-01	2,500	1,300	1,100	LOUVRE; FIXED
W9-02	5,800	2,400	0	SLIDING DOOR; LOUVRE
W9-03	3,400	2,400	0	SLIDING DOOR; LOUVRE
W9-04	3,000	2,400	0	SLIDING DOOR; LOUVRE
W9-05	3,000	2,400	0	SLIDING DOOR; LOUVRE
W10-01	3,000	2,400	0	SLIDING DOOR; LOUVRE
W10-02	5,900	2,400	0	SLIDING DOOR; LOUVRE
W10-03	3,095	2,400	0	SLIDING DOOR; LOUVRE
W10-04	900	1,700	700	LOUVRE; FIXED
W10-04	2,100	1,700	700	LOUVRE; FIXED
W10-05	2,100	1,700	700	LOUVRE; FIXED
W10-06	1,350	1,700	700	LOUVRE; FIXED

GARTNERTROVATO
ARCHITECTS
A 47/90 MONA VALE ROAD
PO BOX 1122
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E MVA@GT-GSM.AU

DATE	REV	DESCRIPTION
26/06/18	A	DA ISSUE
23/10/18	B	DA AMENDMENTS

PROJECT
PROPOSED SHOP TOP HOUSING
1753 PITTWATER RD, MONA VALE NSW
LOT 1 D.P. 715158

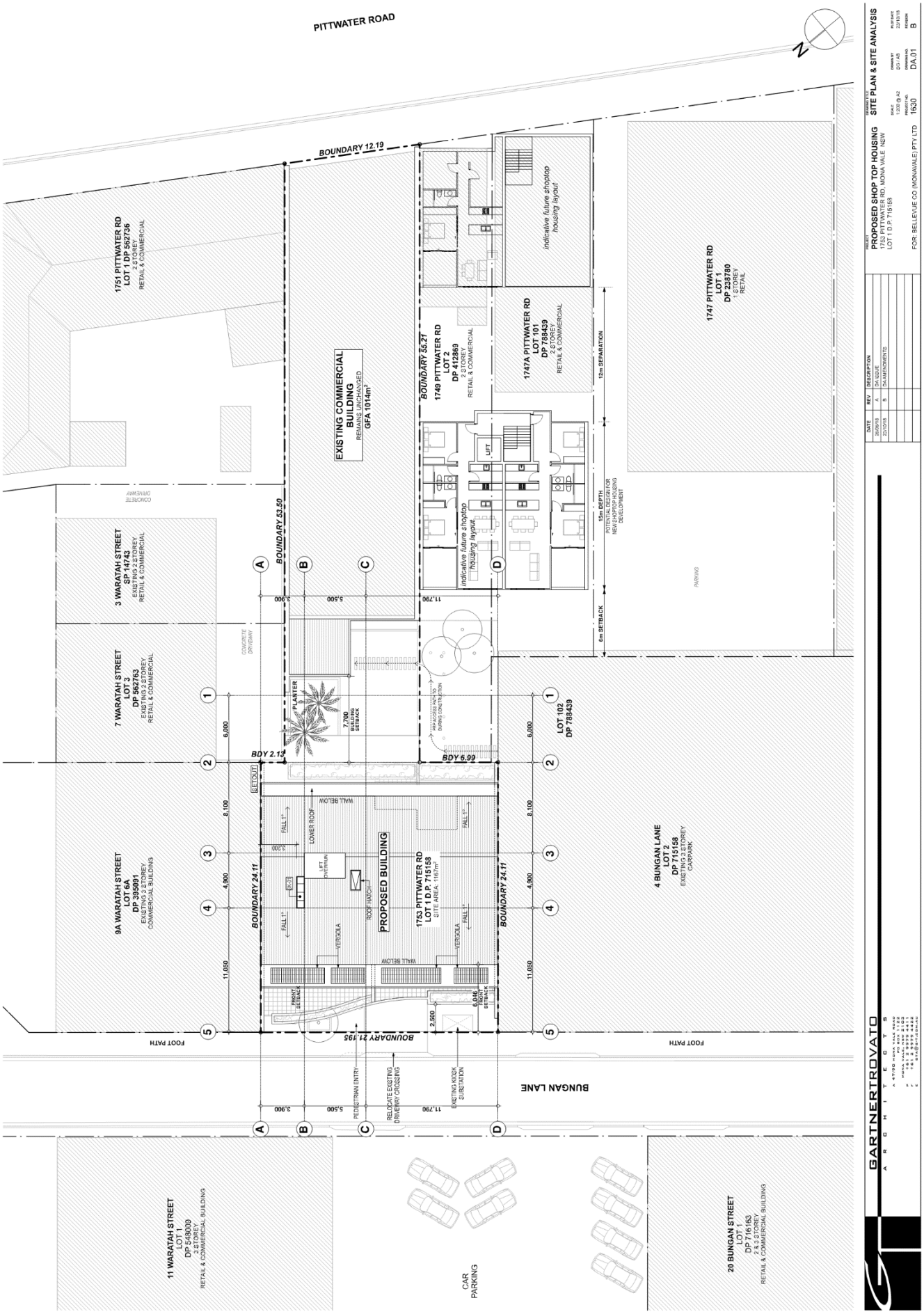
FOR: BELLEVUE CO (MONAVALE) PTY LTD

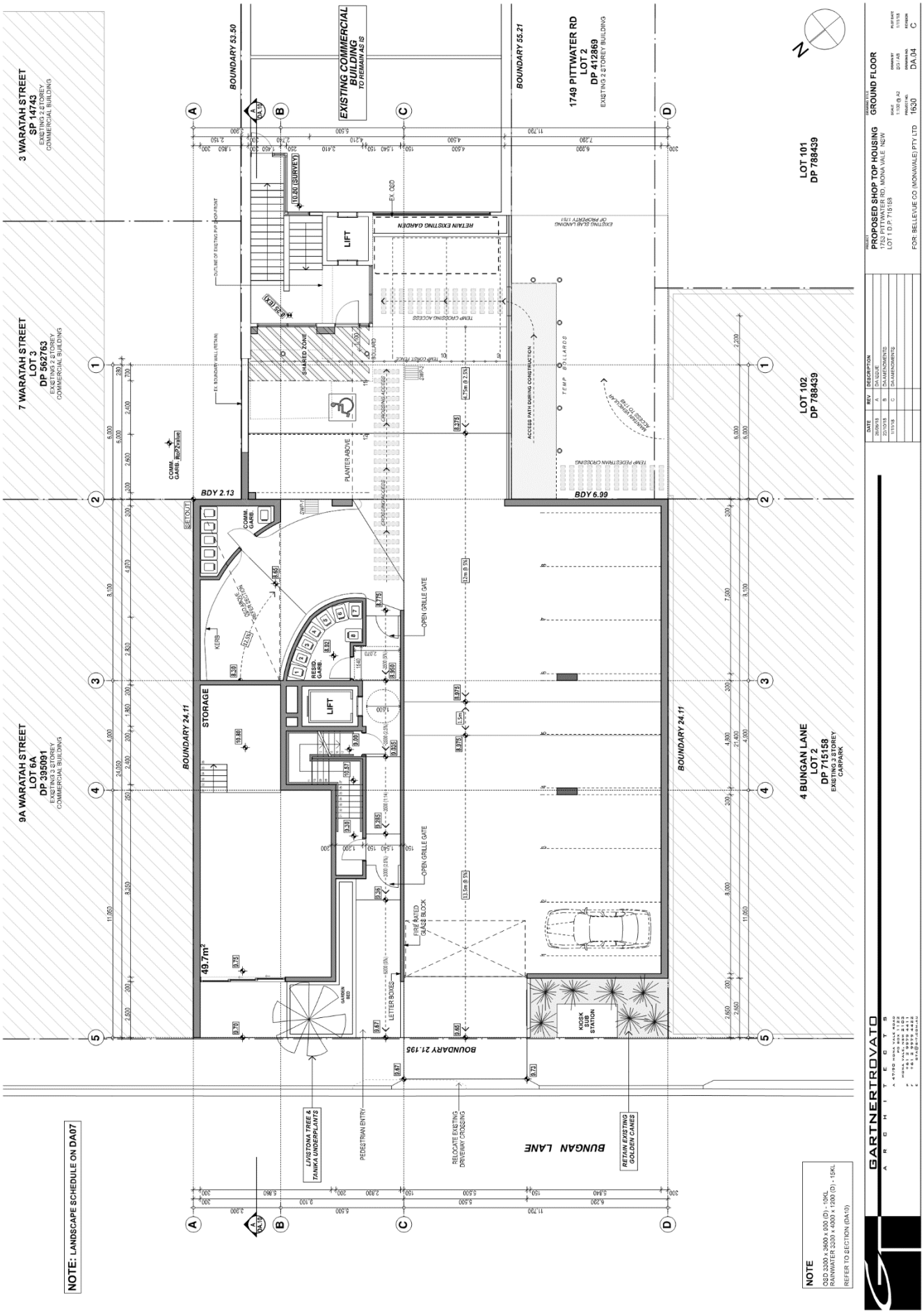
DRAWING TITLE
COVER PAGE

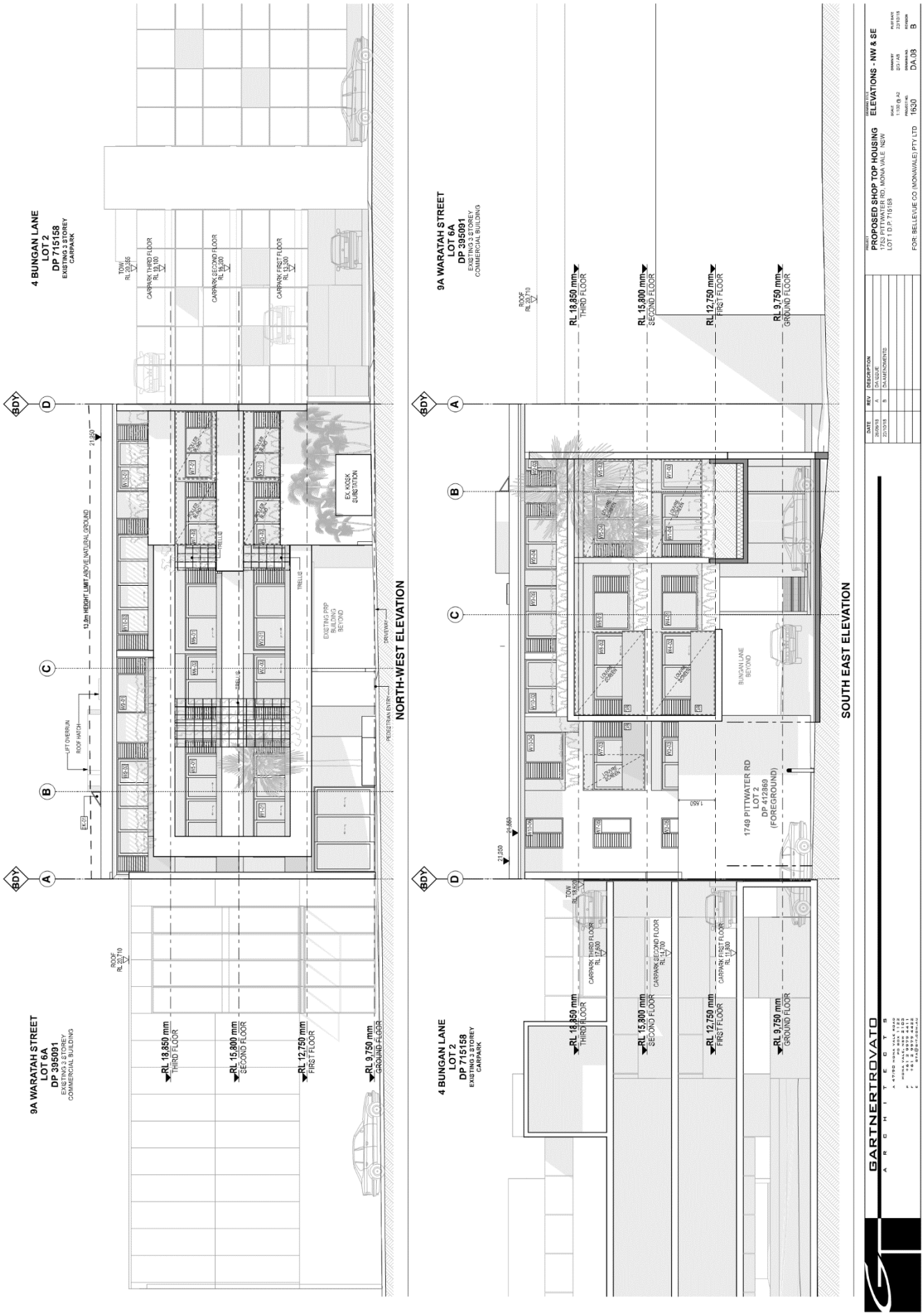
SCALE	DRAWN BY	PLOT DATE
@ A2	SG / AR	23/10/18
PROJECT NO	DRAWING NO	REVISION
1630	DA.00	B

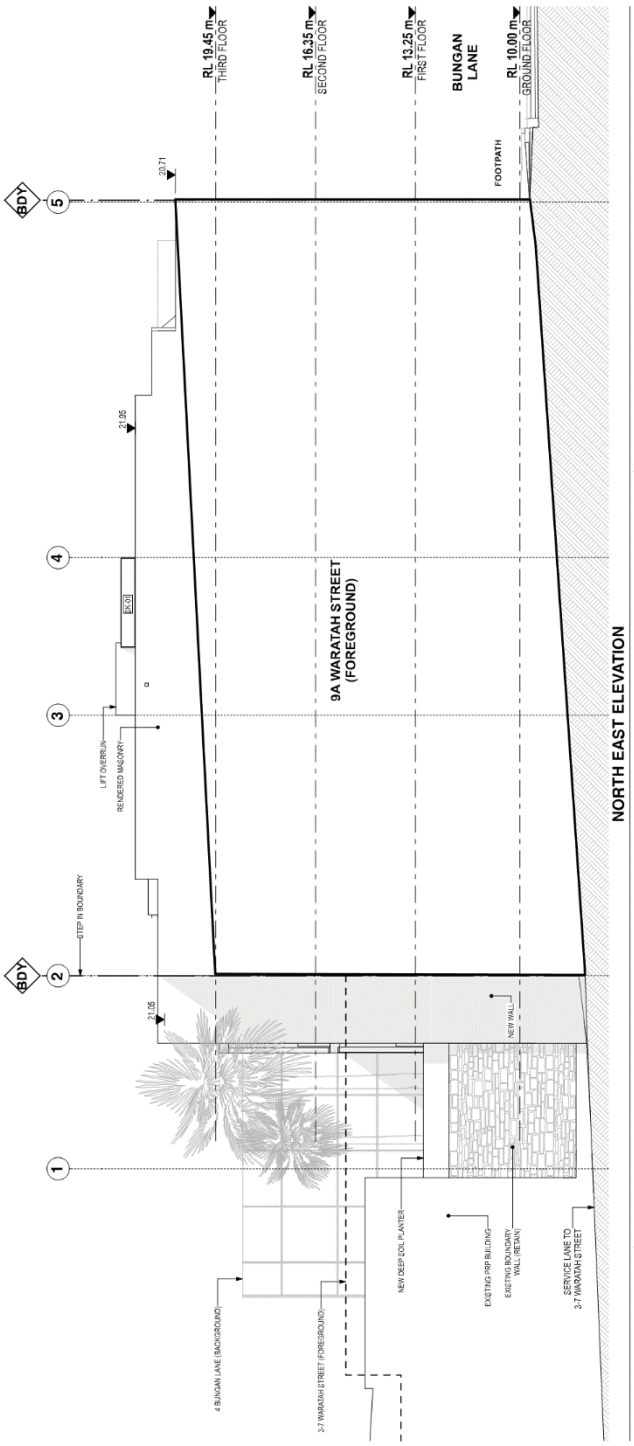
northern beaches council

ATTACHMENT 2
Plans
ITEM NO. 3.1 - 5 DECEMBER 2018

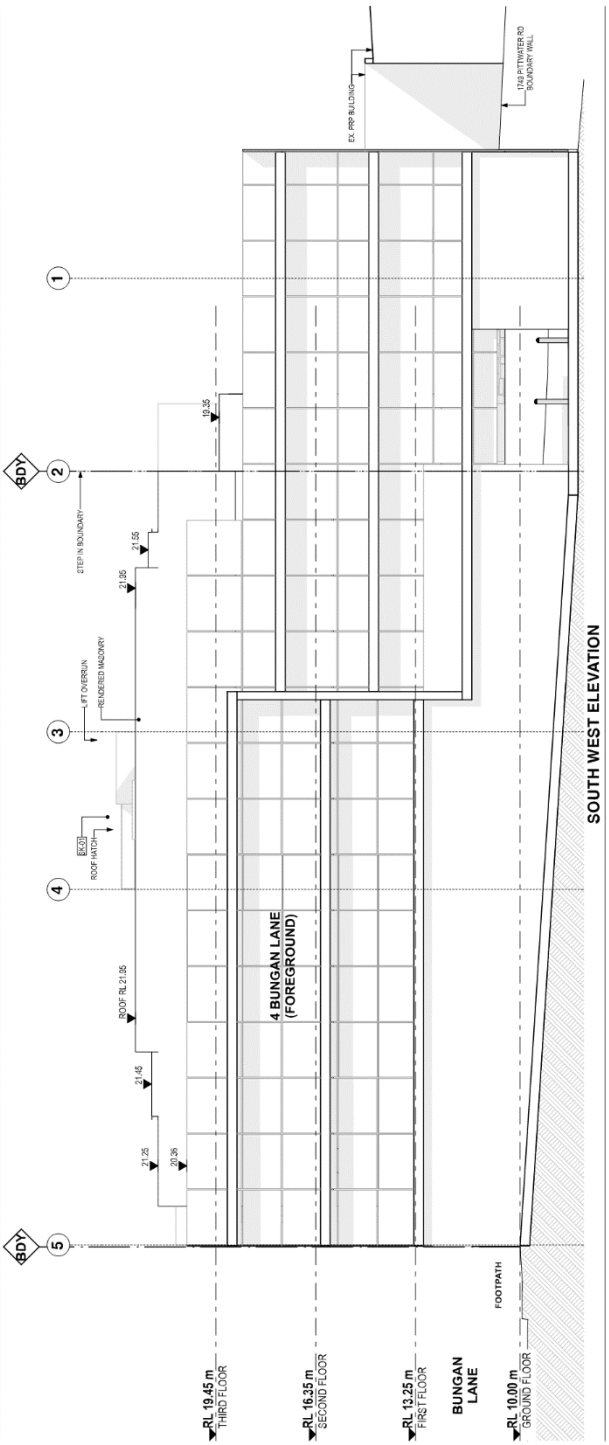

PITTWATER ROAD
BOUNDARY 12.19
BOUNDARY 53.50
BOUNDARY 55.21
BDY 2.13
BDY 6.99
BOUNDARY 24.11
BOUNDARY 21.195
1751 PITTWATER RD
LOT 1 DP 562736
2 STOREY
RETAIL & COMMERCIAL
EXISTING COMMERCIAL BUILDING
REMAINS UNCHANGED
GFA 1014m²
1749 PITTWATER RD
LOT 2
DP 142869
2 STOREY
RETAIL & COMMERCIAL
1747A PITTWATER RD
LOT 101
DP 788439
2 STOREY
RETAIL & COMMERCIAL
1747 PITTWATER RD
LOT 1
DP 223730
1 STOREY
RETAIL
Indicative future shoptop housing layout
Indicative future shoptop housing layout
LIFT
12m SEPARATION
15m DEPTH
POTENTIAL REIGN FOR NEW SHOPTOP HOUSING DEVELOPMENT
6m SETBACK
PARKING
3 WARATAH STREET
SP 14743
EXISTING 2 STOREY
RETAIL & COMMERCIAL
7 WARATAH STREET
LOT 3
DP 562763
EXISTING 2 STOREY
RETAIL & COMMERCIAL
CONCRETE DRIVEWAY
PLANTER
7.700 BUILDING SETBACK
LOT 102
DP 788439
9A WARATAH STREET
LOT 6A
DP 395091
EXISTING 1 STOREY
COMMERCIAL BUILDING
SETOUT
WALL BELOW
LOWER ROOF
FALL 1°
LIFT OVERRUN
ROOF HATCH
PROPOSED BUILDING
1753 PITTWATER RD
LOT 1 D.P. 715158
SITE AREA 1167m²
VERGOLA
FRONT SETBACK
6.041 FRONT SETBACK
2.500
4 BUNGAN LANE
LOT 2
DP 715158
EXISTING 2 STOREY
CARPARK
FOOT PATH
BUNGAN LANE
PEDESTRIAN ENTRY
RELOCATE EXISTING DRIVEWAY CROSSING
EXISTING KIOSK SUBSTATION
11 WARATAH STREET
LOT 1
DP 543009
2 STOREY
RETAIL & COMMERCIAL BUILDING
CAR PARKING
20 BUNGAN STREET
LOT 1
DP 716163
2 & 3 STOREY
RETAIL & COMMERCIAL BUILDING
GARTNER TROVATO
ARCHITECTS
PROJECT
PROPOSED SHOP TOP HOUSING
1753-55 PITTWATER RD, MONA VALE NSW
LOT 1 D.P 715158
FOR: BELLEVUE CO (MONAVALE) PTY LTD
DRAWING
SITE PLAN & SITE ANALYSIS
SCALE 1:200 @ A2
DRAWN BY SCI / AB
PLOT DATE 22/10/18
PROJECT NO. 1630
DRAWING NO. DA.01
REVISION B
DATE REV DESCRIPTION
28/09/18 A DA ISSUE
22/10/18 B DA AMENDMENTS


3 WARATAH STREET
SP 14743
EXISTING 2 STOREY
COMMERCIAL BUILDING
7 WARATAH STREET
LOT 3
DP 562763
EXISTING 2 STOREY
COMMERCIAL BUILDING
9A WARATAH STREET
LOT 6A
DP 395091
EXISTING 3 STOREY
COMMERCIAL BUILDING
BOUNDARY 53.50
EXISTING COMMERCIAL BUILDING
TO REMAIN AS IS
BOUNDARY 55.21
1749 PITTWATER RD
LOT 2
DP 412869
EXISTING 2 STOREY BUILDING
LOT 101
DP 788439
LOT 102
DP 788439
4 BUNGAN LANE
LOT 2
DP 715158
EXISTING 3 STOREY
CARPARK
BDY 2.13
BDY 6.99
BOUNDARY 24.11
BOUNDARY 24.11
BOUNDARY 21.195
LIFT
SHARED ZONE
RETAIN EXISTING GARDEN
TEMP CROSSING ACCESS
TEMP PEDESTRIAN CROSSING
ACCESS PATH DURING CONSTRUCTION
TEMP BOLLARDS
PLANTER ABOVE
COMM. GARB.
SETOUT
RESID. GARB.
STORAGE
49.7m²
KERB
OPEN GRILLE GATE
FIRE RATED GLASS BLOCK
LETTER BOXES
GARDEN BED
KIOSK SUB STATION
BUNGAN LANE
LIVISTONA TREE & TANIKA UNDERPLANTS
PEDESTRIAN ENTRY
RELOCATE EXISTING DRIVEWAY CROSSING
RETAIN EXISTING GOLDEN CANES
NOTE: LANDSCAPE SCHEDULE ON DA07
NOTE
OSD 3300 x 3600 x 930 (D) - 10KL
RAINWATER 3300 x 4000 x 1200 (D) - 15KL
REFER TO SECTION (DA10)
PROPOSED SHOP TOP HOUSING
FROM BELLEVUE RD TO MONA VALE AVE
LOT 1 D.P 715158
FOR: BELLEVUE CO (MONAVALE) PTY LTD
GROUND FLOOR
1:100 @ A2
16.30
DA.04
C
DATE
REV
DESCRIPTION
28/09/18
A
DA ISSUE
22/10/18
B
DA AMENDMENTS
11/11/18
C
DA AMENDMENTS
GARTNERTROVATO
ARCHITECTS


NORTH-WEST ELEVATION
SOUTH EAST ELEVATION
4 BUNGAN LANE
LOT 2
DP 715158
EXISTING 3 STOREY
CARPARK
9A WARATAH STREET
LOT 6A
DP 395091
EXISTING 3 STOREY
COMMERCIAL BUILDING
RL 18,850 mm
THIRD FLOOR
RL 15,800 mm
SECOND FLOOR
RL 12,750 mm
FIRST FLOOR
RL 9,750 mm
GROUND FLOOR
ROOF
RL 20,710
TOW
RL 20,456
CARPARK THIRD FLOOR
RL 19,100
CARPARK SECOND FLOOR
RL 16,000
CARPARK FIRST FLOOR
RL 13,300
13.0m HEIGHT LIMIT ABOVE NATURAL GROUND
LIFT OVERRUN
ROOF HATCH
TRELLIS
EX. KIOSK SUBSTATION
EXISTING PRP BUILDING BEYOND
DRIVEWAY
PEDESTRIAN ENTRY
BUNGAN LANE BEYOND
1749 PITTWATER RD
LOT 2
DP 412869
(FOREGROUND)
21,350
21,560
1,660
GARTNERTROVATO
ARCHITECTS
PROJECT
PROPOSED SHOP TOP HOUSING
1749-51 PITTWATER RD, MONA VALE NSW
LOT 1 D.P 715158
FOR: BELLEVUE CO (MONAVALE) PTY LTD
DRAWING
ELEVATIONS - NW & SE
SCALE
1:100 @ A2
DRAWN BY
SG / AB
PLOT DATE
22/10/18
PROJECT NO.
1630
DRAWING NO.
DA.03
REVISION
B
DATE
REV
DESCRIPTION
28/09/18
A
DA ISSUE
22/10/18
B
DA AMENDMENTS



NORTH EAST ELEVATION



SOUTH WEST ELEVATION

DATE	REV	DESCRIPTION
28/09/18	A	DA ISSUE
22/10/18	B	DA AMENDMENTS

PROJECT
PROPOSED SHOP TOP HOUSING
1747-53 PITTWATER RD, MONA VALE NSW
LOT 1 D.P 715168

FOR: BELLEVUE CO (MONAVALE) PTY LTD

TITLE
ELEVATIONS - NE & SW

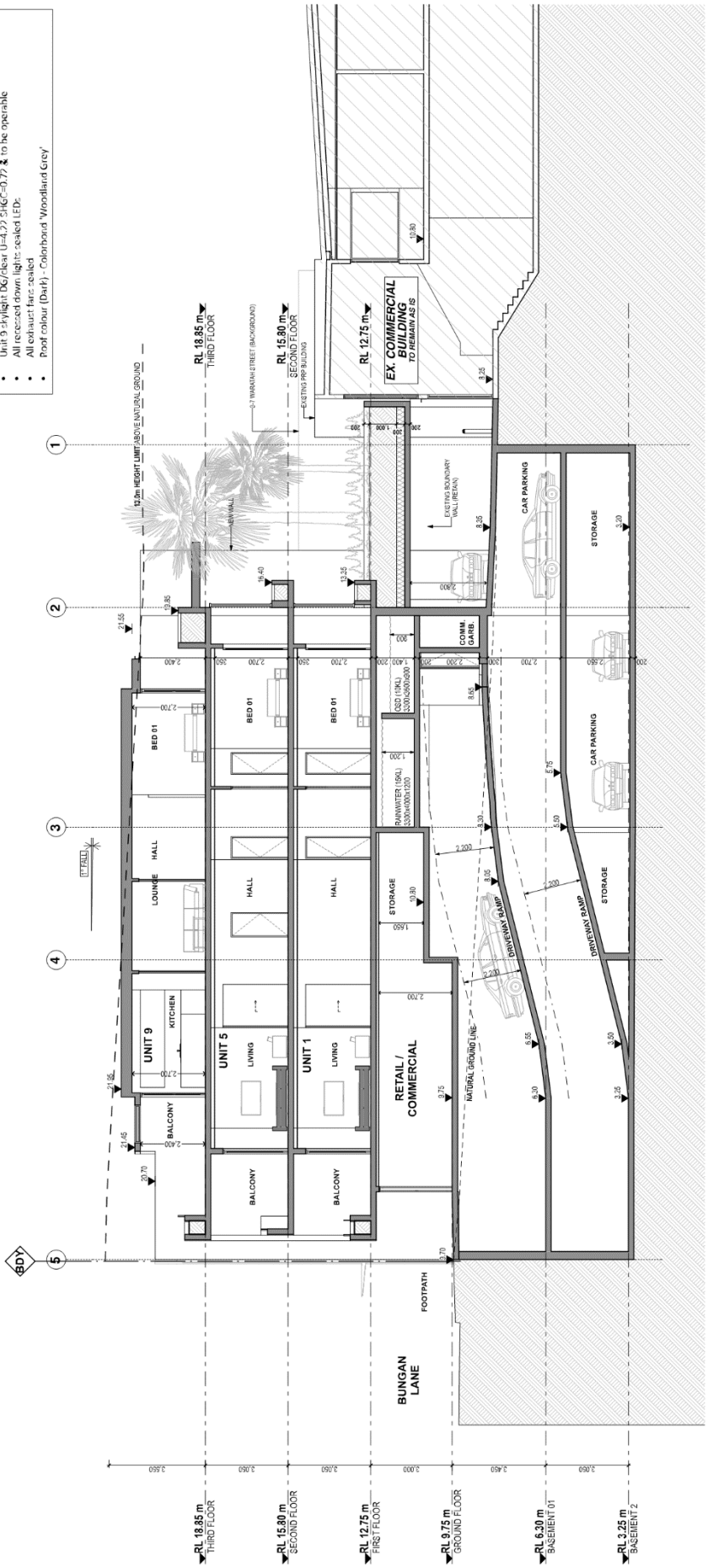
SCALE 1:100 @ A2
DRAWN BY SCI / AB
PLOT DATE 22/10/18
PROJECT NO. 1630
DRAWING NO. DA.09
REVISION B

GARTNERTROVATO
ARCHITECTS
A 47/90 Mount Street Lane
PO Box 1122
North Sydney NSW 2059
P +61 2 9929 4411
F +61 2 9929 4422
E gtv@gtv.com.au

BASIX NOTES

The Thermal Performance Requirements used to achieve these results are:

- 150mm external walls f/c clad/framed + carting + R2.0 insulation
- 250/90mm boundary/party wall: 150mm. Pytch/framed/carting + R2.0
- Concrete floor throughout with R1.0 insulation floor to car parf & outdoor air
- Ceiling: adjacent to balcony to include R2.0 insulation
- Ceiling: adjacent to metal roof to include R3.0 insulation
- Foil lined blanket to underside of metal roof
- All window/glass doors aluminium framed/single/clear glass U=6.7 SHGC=0.7
- Unit 9 skylight DG/clear U=4.22 SHGC=0.77 & to be operable
- All recessed down lights sealed
- All exhaust fans sealed
- Roof colour (Dark) - Colorbond 'Woodland Grey'



DATE	REV	DESCRIPTION
28/09/18	A	DA ISSUE
22/10/18	B	DA AMENDMENTS

PROJECT
PROPOSED SHOP TOP HOUSING
7 PITTWATER ROAD, MONA VALE NSW
LOT 1 D.P. 715168

FOR: BELLEVUE CO (MONAVALE) PTY LTD

TITLE
SECTION A-A

SCALE 1:100 @ A2
DRAWN BY SCI / AB
PLOT DATE 22/10/18
PROJECT NO. 1630
DRAWING NO. DA.10
REVISION B

GARTNERTROVATO
ARCHITECTS

ITEM 3.2	**MOD2018/0534 - 209-211 OCEAN STREET, NARRABEEN - MODIFICATION OF DA2017/1136 GRANTED FOR ALTS AND ADS TO A SHOP TOP HOUSING DEVELOPMENT**
REPORTING OFFICER	**Matt Edmonds**
TRIM FILE REF	**2018/750385**
ATTACHMENTS	**1 Assessment Report**
	2 PLans

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. MOD2018/0534 for PROPOSAL at SP 89359, 209-211 Ocean Street, Narrabeen subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0534

Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot CP SP 89359, 209 - 211 Ocean Street NARRABEEN NSW 2101
Proposed Development:	Modification of Development Consent DA2017/1136 granted for alterations and additions to a shop top housing development
Zoning:	Warringah LEP2011 - Land zoned B1 Neighbourhood Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	The Owners Strata Plan 89359
Applicant:	Boston Blyth Fleming Pty Ltd

Application lodged:	05/10/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	24/10/2018 to 10/11/2018
Advertised:	27/10/2018
Submissions Received:	0
Recommendation:	Approval

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - D18 Accessibility

SITE DESCRIPTION

Property Description:	Lot CP SP 89359 , 209 - 211 Ocean Street NARRABEEN NSW 2101
Detailed Site Description:	209 - 211 Ocean Street, Narrabeen (the subject site) is a shop top housing development located on land zoned for B1 Neighbourhood Centre purposes pursuant to the Warringah Local Environmental Plan 2011. The site is a corner allotment bound by Ocean Street to the west, Malcolm Street to the north and a Council carpark (zoned for RE1 Public Recreation) to the east. Further east of the site is North Narrabeen Beach. South of the site are two other shop-top housing developments (203 and 205-207 Ocean Street) which have shared walls with the subject development site. The site is generally rectangular in shape with a 3m step on the eastern edge, a frontage of 36m to Malcolm Street, a 22.2m frontage to Ocean Street and an overall surveyed area of 795m^2. Presently the allotment accommodates a part two / part three storey shop top housing development comprising of three food and drink premises on the ground floor and seven apartments on the two floors above. The site has a basement level for the purpose of car parking. The entirety of the site has been built upon and therefore there are no noteworthy topographical or landscape features of the site.

Map:

SITE HISTORY

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

Development Application No. 2017/1136
Application for alterations and additions to a shop top housing development, including the addition of a new penthouse unit. The application was determined by way of approval by the Northern Beaches Local Planning Panel on 21 March 2018.

PROPOSED DEVELOPMENT IN DETAIL

This modification application to Development Consent DA2017/1136 is lodged pursuant to Section 4.55 (2) of the Environmental Planning and Assessment Act 1979 and seeks to modify the approved plans of the building. Specifically, the application seeks consent for the following items:

- Internal reconfiguration of approved Unit 8 of the development (unbuilt, and approved under DA2017/1136)
- Upgrade lift shaft to provide access to the roof terrace level from the lift, equating to a change in height from RL20.850 to RL21.510
- Construction of a small glazed lobby at roof level to provide weather coverage from the lift
- Enclosure of existing stairwell that provides access to the roof terrace
- Addition of two skylights
- Relocation of air conditioning units and associated screening in accordance with Condition 2 of DA2017/1136

AMENDED PLANS

The above works reference a revised revision of plans received by Council on 20 November 2018. Revised plans were requested from the applicant as the application as lodged was considered excess by virtue of the size of structures proposed on the roof terrace (larger lobby, bathrooms).

The scope of difference between the plans and lodged and the revised plans received is considered minor and the two design schemes are akin enough to eachother, and of equal environmental impact, that re-notification of the revised plans is not warranted in accordance with Part A.7 of the Warringah Development Control Plan 2011 (**WDCP 2011**).

Herein this report will discuss only the revised plans received on 20 November 2018, and will refer to such as the '**development**.'

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 DA2017/1136, 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 DA2017/1136.
(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 DA2017/1136 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require,	The application has been publicly exhibited in accordance with the Environmental Planning and

Section 4.55 (2) - Other Modifications	Comments
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	Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environmental Plan 2011 and Warringah Development Control Plan 2011.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 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)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application. Clauses 54 and 109 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.

Section 4.15 'Matters for Consideration'	Comments
	Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent. 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. 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 matter has been addressed via a condition in the original consent.
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	(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. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
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.

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 of the application Council received no submissions.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	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. 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.
Strategic and Place Planning (Urban Design)	The current height and extents of additional rooms to the rooftop area demonstrated in the proposed Modifications to the Development application is not supportable. However subject to the following amendments to the design, as conditioned, the Modification may be supported.

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 65 - Design Quality of Residential Apartment Development

The magnitude of works sought as a part of this application does not change the previous assessment against the requirements of SEPP 65 nor the provisions of the Apartment Design Guide undertaken in the parent DA Assessment Report. The works sought under this modification application do not constitute as a substantial redevelopment of the building and does not trigger a re-assessment of SEPP 65.

Accordingly, the previous SEPP 65 assessment remains, and has been included hereunder for reference only:

START OF EXTRACT FROM DA2017/1136 ASSESSMENT REPORT BY NORTHERN BEACHES COUNCIL

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

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

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

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

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
(c) the building concerned contains at least 4 or more dwellings.

Council's assessment finds that the addition of a second floor atop of a portion of the existing building and the addition of a new apartment warrants the development to be a *substantial redevelopment* as per Cl.4 (1) (ii) and accordingly, the provisions of SEPP 65 are applicable to the assessment of this application.

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

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

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

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.
Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment:
The site is situated in an irregular context given the subject zoning of the site and the different zoning of other sites within the immediate vicinity (including R2 Low Density Residential, R3 Medium Density Residential and RE1 Public Recreation). Additionally, the site borders a carpark to the north and east, a road to the west and a similar scale shop top housing development to the south.

However irregular the zoning layout is of the immediate area, the proposed second floor addition will contextually respond to the scale of the existing building on site and the pre-existing prevailing heights of developments south and on the opposite side of Ocean Street (as they are subject to a greater maximum building height). Additionally, the architecture of the proposal is consistent with the existing building on site and will contribute to enhance the visual aesthetic of the building when viewed from surrounding sites and when viewed driving south-bound on Ocean Street which is considered to be the most predominant aspect of the building.

Given that the proposed addition does not result in any reduction of landscaping, is lesser than the existing maximum height of the building and results in negligible amenity impacts upon other surrounding properties, it is considered that the proposal satisfies Principle 1 on context and neighbourhood character.

Principle 2: Built Form and Scale

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

Comment:
The proposed development has an architecture that is sympathetic to the pre-exisitng building on site and to the sensitive coastal environment of which the site is situated. The proposal has adopted traditional design features of a podium form where the proposed storey is setback between 2.0m and 3.5m from the outer edge of the levels below and has an integrated wide-brimmed eave/awning to visually compress the building. Additionally, the facades facing out onto Ocean Street and Malcolm Street are predominantly finished with floor-to-ceiling operable glazing that further reduces the perceived bulk of the building juxtaposed to a solid mass.

The development also proposes a wrap-around balcony fronting Ocean Street and Malcolm Street. The glazed balustrade for the balcony is setback approximately 900mm from the outer edge of the floor below. This simple architectural technique reduces the overall perceived height of the development as nothing abuts the levels below, and contributes to the visual manipulation of the second floor having a greater setback than it really does.

Overall, it is thought that the proposal has a well-considered architecture that is both responsive to the streetscape and the existing building on site and is therefore considered to satisfy Principle 2 on built form and scale.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.
Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment:
The development is for the addition of one unit only comprising of three bedrooms. The proposed unit is large in terms of floor area and provides a full wrap-around balcony that ensures that there is adequate indoor and outdoor recreational space for occupants of the development. Additionally it is worth noting the beach-front location of the site which provides a much greater level of outdoor recreational space. Therefore, the occupants of the development will not be impacted by an unreasonable density and the proposed addition is consistent with the existing density of the site.

Principle 4: Sustainability

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

Comment:
The proposed development has an orientation that ensures it receives an abundance of natural light and cross-ventilation in accordance with the requirements of the ADG. The concrete roof and awning design of the proposal provides an appropriate level of passive thermal mass where it will obstruct the high sun from directly entering the apartment in the summer months, but will allow for the floor slab of the apartment to benefit from thermal massing in the winter months.

Principle 5: Landscape

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

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

neighbours' amenity, provides for practical establishment and long term management.

Comment:
The development is for the addition of a second storey atop of an existing two storey building and thereby has no impact or changes to any provision of landscaped open space.

Principle 6: Amenity

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

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

Comment:
The proposed development provides a second storey 'penthouse' apartment that is large in scale, achieves natural sunlight and ventilation throughout the day and has a positive outlook across the streetscape and the adjoining public lands. The design provides an acceptable amenity for occupants without impacting on the amenity of other surrounding sites and is therefore considered to be satisfactory in terms of Principle 6.

Principle 7: Safety

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

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

Comment:
The development utilises the existing security systems in place at the existing development which are considered to be satisfactory. The orientation of the apartment and the wrap-around balcony provide for additional opportunities for passive surveillance of the vast surrounding public open spaces and car parks which enhances the general safety of the area.

Principle 8: Housing Diversity and Social Interaction

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

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

Comment:
It is likely that the proposed second storey 'penthouse' apartment would be fitted with the specifications required for a multi-million dollar apartment, thereby providing a level of diversity from some other surrounding residential flat buildings and shop top housing developments. The development does not directly impinge on any social interactions (being an addition to an existing shop-top housing

development), but creates a better connection between the building and the surrounding public open spaces through the large wrap-around balcony.

Principle 9: Aesthetics

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

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

Comment:
The proposed development will enhance the aesthetic of the overall development when viewed from the surrounding public open spaces and the adjoining and nearby developments. The architecture of the proposal is consistent with the existing built form and maintains the predominant curved corner at the north-western vertex of the site which will make the building appear as though it had all been constructed at the same time. Additionally, the palette of materials selected is the same as the pre-existing building which already responds positively to the streetscape and surrounding areas.

Overall, the development is considered to be well designed and responsive to the existing scale of development on site, surrounding developments and the surrounding coastal environment. The development is considered to satisfy Principle 9.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	**Consistent** The development is assessed as satisfactorily responding to its context in accordance with the 9 Principles of SEPP 65 as above.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	**Consistent** The development is orientated in such a manner which provides an adequate provision of visual outlook, solar access and ventilation whilst enhancing the streetscape aesthetic from Malcolm Street and Ocean Street.

<table>
<tr><td>Public Domain Interface</td><td>Does the development transition well between the private and public domain without compromising safety and security?

Is the amenity of the public domain retained and enhanced?</td><td>Consistent

Whilst the proposed development is located at the second storey of the pre-existing development (thereby not having any direct impact on the immediate street interface), the openness of the proposed apartment (wrap around balcony) will create a visual connection between private and public space and will increase opportunities for passive surveillance of the surrounding land.</td></tr>
<tr><td>Communal and Public Open Space</td><td>Appropriate communal open space is to be provided as follows:

1. Communal open space has a minimum area equal to 25% of the site
2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)</td><td>Not Applicable

The development is for the addition of one apartment only and proposes no modification to the existing provision of communal open space.</td></tr>
<tr><td>Deep Soil Zones</td><td>Deep soil zones are to meet the following minimum requirements:

<table><tr><th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr><tr><td>Less than 650m^2</td><td>-</td><td rowspan="4">7%</td></tr><tr><td>650m^2 – 1,500m^2</td><td>3m</td></tr><tr><td>Greater than 1,500m^2</td><td>6m</td></tr><tr><td>Greater than 1,500m^2 with significant existing tree cover</td><td>6m</td></tr></table></td><td>Not Applicable

The application proposes no amendment to the existing provision of deep soil zones.</td></tr>
<tr><td>Visual Privacy</td><td>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</td><td>Consistent

The site only shares one boundary with an adjoining development.</td></tr>
</table>

	<table><tr><th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table> ***Note:*** *Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.* *Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.*	North of the site is Malcolm Street, a public car park, a public park and the North Narrabeen Surf Life Saving Club some 100m away. West of the site and across Ocean Street is No.214 Ocean Street which has a spatial separation of approximately 30m from the subject development. Thereby the development satisfies this requirement.
Pedestrian Access and entries	Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify? Large sites are to provide pedestrian links for access to streets and connection to destinations.	**Not Applicable** No changes are proposed to the existing building entry and therefore this requirement is not for consideration.
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	**Not Applicable** No amendment to the existing vehicle access is proposed.
Bicycle and Car Parking	For development in the following locations: • On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or • On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street. Parking and facilities are provided for other modes of transport.	**Consistent** The development provides a sufficient provision of carparking for the apartment in accordance with Appendix H of the Warringah Development Control Plan 2011.

	Visual and environmental impacts are minimised.	
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: • Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. • A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter	**Consistent** The proposed apartment achieves an adequate provision of access to sunlight without detrimentally impacting upon the existing provision of access to sunlight enjoyed by surrounding buildings.
Natural Ventilation	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by: • At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. • Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	**Consistent** The apartment is openable on the entire northern and western facade which provides a sufficient provision of natural cross ventilation in accordance with the requirements of the control.
Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: **Minimum ceiling height** Habitable rooms: 2.7m Non-habitable: 2.4m For 2 storey apartments: 2.7m for main living area floor; 2.4m for second floor, where its area does not exceed 50% of the apartment area Attic spaces: 2.7m for main living area floor; 2.4m for second floor, where its area does not exceed 50% of the apartment area If located in: 2.7m for main living area floor	**Consistent** The entire apartment attains a floor to ceiling height of 2700mm which satisfies the requirement of the control.

	mixed used areas: 2.4m for second floor, where its area does not exceed 50% of the apartment area	
Apartment Size and Layout	Apartments are required to have the following minimum internal areas: **Apartment type** / **Minimum internal area** Studio: $35m^2$ 1 bedroom: $50m^2$ 2 bedroom: $70m^2$ 3 bedroom: $90m^2$ The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by $5m^2$ each. A fourth bedroom and further additional bedrooms increase the minimum internal area by $12m^2$ each. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms. Habitable room depths are limited to a maximum of 2.5 x the ceiling height. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window. Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space). Bedrooms have a minimum dimension of 3m (excluding wardrobe space). Living rooms or combined living/dining rooms have a minimum width of: • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	**Consistent** The three bedroom, 2.5 bathroom penthouse apartment is required to have a minimum internal area of $95m^2$. The proposed internal area is approximately $142m^2$ and therefore satisfies the requirement of the control.
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: **Dwelling Type** / **Minimum Area** / **Minimum Depth**	**Consistent** The apartment has a 2.4m wide west facing balcony that measures

	<table><tr><td>Studio apartments</td><td>4m^2</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m^2</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m^2</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m^2</td><td>2.4m</td></tr></table> For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m^2 and a minimum depth of 3m.	approximately 45m^2. An additional narrow balcony measuring approximately 9m^2 is north of the apartment.
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	**Consistent** The proposed apartment will be the single residence accessible from this level.
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m^2</td></tr><tr><td>1 bedroom apartments</td><td>6m^2</td></tr><tr><td>2 bedroom apartments</td><td>8m^2</td></tr><tr><td>3+ bedroom apartments</td><td>10m^2</td></tr></table> At least 50% of the required storage is to be located within the apartment.	**Consistent** The proposed apartment has a sufficient provision of storage space within the apartment to satisfy this requirement.
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	**Consistent** The proposed apartment is located further than 3.0m from any service infrastructure that could acoustically impact on the occupants of the development. The apartment adjoins the existing communal roof terrace to the east, and the bedrooms are situated on the opposite side of the apartment to maximise their amenity by virtue of acoustic privacy and solar access.
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	**Consistent** The design and layout of

		the apartment is considered to be satisfactory in accordance with the surrounding potential noise pollution.
Configuration		
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	**Consistent** The proposed scale of the one proposed apartment is considered to be appropriate for the context of the site and will support the housing needs, choice and availability for the community.
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	**Consistent** The proposed second storey facade is consistent with the pre-existing architecture on the site which is respectful of the character of the area. The recessed second floor contributes to reducing any perceivable visual bulk of the facade and is appropriate within the context of the site.
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Test whether the roof space can be maximised for residential accomodation and open space.	**Consistent** The proposed roof level of the development is assessed as being satisfactory in accordance with Clause 4.3 and 4.6 of the WLEP 2011. However, as noted elsewhere in this report, the addition of air conditioning units atop of the roof is not supported given the potential visual impact from surrounding sites (both present and in future) and given the level of non-compliance that would result in such a development. This matter has been adequately

<table>
<tr><td></td><td></td><td>addressed via conditions of consent in the recommendations of this report.</td></tr>
<tr><td>Landscape Design</td><td>Was a landscape plan submitted and does it respond well to the exisitng site conditions and context.</td><td>Not Applicable

No amendment to the existing landscape provision is .proposed.</td></tr>
<tr><td>Planting on Structures</td><td>When planting on structures the following are recommended as minimum standards for a range of plant sizes:
<table>
<tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr>
<tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m^3</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr>
<tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m^3</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr>
<tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m^3</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr>
<tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr>
<tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr>
<tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr>
</table></td><td>Not Consistent

The development does not propose any modification to the existing provision of planting on structures.

Given the harsh coastal environment and prevailing winds that the building is exposed to, it is considered unreasonable and impractical to require planter boxes on the building.</td></tr>
<tr><td>Universal Design</td><td>Developments are to achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.</td><td>Consistent

The proposed apartment achieves greater than silver level universal design features in accordance with the Livable Housing Guidelines.</td></tr>
<tr><td>Adaptive Reuse</td><td>New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.</td><td>Not Applicable

The development does not propose to reuse or re-purpose any elements</td></tr>
</table>

		of the existing building and thereby, does not warrant adaptive reuse to be an applicable criterion in the assessment of this application.
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	**Not Applicable** The development is solely for the purpose of residential accommodation and therefore, does not warrant mixed use to be an applicable criterion in the assessment of this application.
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	**Not Applicable** This development application proposes no amendment to the existing (and approved) awning over the public footpath servicing the site. No signage is sought in this development consent.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	**Consistent** The applicable is buttressed by a BASIX and NatHERS Certificate which are endorsed by the recommendations of this report.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	**Consistent** The development seeks to utilise the existing stormwater system available on site which has been assessed as satisfactory by Council's Development Engineers.
Waste Management	Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.	**Consistent** The provision of waste management proposed under this application is satisfactory when tested

		against the relevant Council policies.
Building Maintenance	Incorporates a design and material selection that ensures the longevity and sustainability of the building.	**Consistent** The architecture of the building has selected materials that are consistent with the existing architecture and that will remain durable in longevity.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

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

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

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

Comment:
None of the standards specified in Clause 30 (1) of SEPP 65 are being used as grounds for refusal of this development application.

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

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

(3) To remove doubt:

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

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent

authority may grant or modify development consent.

Comment:
The application has given appropriate regard to the design quality principles of SEPP 65 and the objectives and requirements specified in the Apartment Design Guide. This is self-evident in the architectural plans and in the documentation buttressing the application.

END OF EXTRACT FROM DA2017/1136 ASSESSMENT REPORT

SEPP 71 - Coastal Protection

Council's Coastal Officer reviewed the parent development application and raised no objections to the proposal as the works will have no impact on coastal processes, will not give rise to coastal hazards and will not obstruct public access to the beach. The magnitude of works sought as a part of this application does not change this previous assessment, and therefore the application is considered to comply with the provisions of the SEPP.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.15m (Building - RL19.903) 11.09m (AC Units - RL20.850 - aligned with lift overrun)	11.76m (RL21.51)	- 38.3% (to requirement) - 15.8% to approved building height	No

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

In accordance with the Land and Environment Court caselaw of *North Sydney Council v Michael Standley & Associates Pty Ltd [1009] NSW 163* (***Michael Standley & Associates***) the Court determined that Section 96 (now Section 4.55) is a "free-standing provision" meaning that *"a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application*." This means that Clause 4.6 of the WLEP 2011 does not strictly apply to the assessment of a modification application.

Notwithstanding the findings in *Michael Standley & Associates*, the Court later detailed in *Gann v Sutherland Shire Council (2008)* that consideration should still be given to the relevant standard objectives:

"This does not mean that development standards count for nothing. Section 96(3) still requires the consent authority to take into consideration the matters referred to in s 79C, which in turn include the provision of any environmental planning instrument. That is, any development standard in an environmental planning instrument must be taken into consideration by the consent authority, but the absolute prohibition against the carrying out of development otherwise than in accordance with the instrument in s 76A(1) does not apply."

Accordingly, with consideration to the above caselaw, a merit assessment of the variation sought against the approved development is undertaken below to identify the developments consistency with the zone objectives and prevailing development standard objectives.

The following assessment of the variation to Clause 4.3 Height of Buildings development standard has taken into consideration the questions established in *Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46* and the Clause 4.6 Exceptions to Development Standards assessment undertaken in the Assessment Report for DA2017/1136.

Requirement:	8.5 metres
Approved	10.15 metres (building) @ RL 19.903 11.09 metres (air-conditioning units, aligned with existing lift overrun) @ RL 20.850
Proposed:	11.76 metres (lift overrun) @ RL 21.510 (increase of 0.66m) 11.61 metres (lobby and stair roof) @ RL 21.360
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
Variation:	Up to 38.3% variation

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

Is the planning control in question a development standard?

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the WLEP 2011 is a development standard as defined by the Environmental Planning and Assessment Act 1979.

What are the underlying objectives of the development standard?

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

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

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

Comment:
The entirety of the structures proposed and subject of this Section 4.55 (2) application breach the building height standard plane of 8.5 metres by up to 3.26 metres (maximum). Relative to the approved development, this increase is negligible and equates to a 0.66m increase to the liftshaft structure, and an increase in height over the small portions of the stairwell and lift door. Other breaches that form a part of the application (A/C Units and screening) are as envisioned by the Development Consent DA2017/1136.

Contextually the further breach to the Development Standard sought by this application is considered to be acceptable in the circumstances of the case for the following reasons:

- The proposed additional height is for the purpose of providing equitable access to persons of all mobility to the roof terrace. The approved scheme does not enable lesser-abled persons to access and enjoy the same amenity that more-abled persons can enjoy on the roof terrace.
- The proposed additional height measures to be only 0.66 metre higher than the existing and approved height of the development (from RL20.850 to RL21.360). The breach is found to cause no unreasonable nor adverse amenity or environmental impacts.
- Across Ocean Street are a series of residential flat buildings on land zoned for R3 Medium Density Residential development pursuant to the WLEP 2011. The R3 zone is subject to an 11 metre Height of Buildings Development Standard and therefore, contextually, the proposed structure is only 0.76m above the permitted height of directly adjacent buildings (which would accordingly equate to a 6.9% variation).
- The site is bound by public open space on three sides, meaning that the development won't be visually perceived as incompatible with the surrounding height of buildings and will not present as an anomaly in the skyline as it is the first building on the eastern-side of Ocean Street in a south-bound direction.

Accordingly, this assessment finds that the building is compatible with the height and scale of surrounding and nearby development.

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

Comment:
The assessment of this application has determined that the works sought will not attribute to any unreasonable nor detrimental view loss, loss of privacy or loss of solar access. As demonstrated by the photo montages provided to accompany the application, it is evident that the subject structures will be seldom visible from the public and private domain, and where they are visible, they are consistent with the architecture of the development as a whole and are therefore of an

acceptable visual impact.

Accordingly, this assessment finds that the development will not have any unreasonable nor adverse impacts upon surrounding public or private properties.

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

Comment:
The proposed development will not have any adverse impacts on the scenic quality of the Northern Beaches coastal and bushland environment, given that the structures sought are atop of an existing three storey building in a highly urbanised area. No vegetation is sought to be removed by this application, and the beachfront and surrounding vantage points will not be impacted by the development.

Accordingly, this assessment finds that the development has no unreasonable nor detrimental impact on the scenic quality of coastal and bush environments.

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

Comment:
As elaborated upon in objectives (b) and (c) above, the development will have an acceptable visual impact when viewed from public places such as parks, reserves, beaches and surf clubs.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the B1 Neighbourhood Centre zone.

The underlying objectives of the B1 Neighbourhood Centre zone

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*

  Comment:
  The proposed development does not impact on the existing provision of small scale retail businesses which are within the immediate vicinity of, and on, the site.

- *To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.*

  Comment:
  The proposed development will not impact on the existing atmosphere of the neighbourhood centre, given the quality of the architecture overall and the consistency with surrounding developments.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

  Comment:
  It is not anticipated that the proposed development will give rise to any land use conflict nor unreasonably impact on the existing provision of amenity enjoyed by adjoining or nearby

residents.

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

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

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

Comment:
The subject modification application does not rely upon the flexibility that may be granted by Clause 4.6 for the reasons outlined in the first paragraph of this assessment.

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

Comment:
The development seeks a minor increase to the approved height of the development in order to provide equitable access to the roof terrace of the building. The proposal does not increase the yield of the development and has a negligible, if any, impact upon surrounding lands. In the interest of orderly development and equitable access to all, it is found that the development as proposed achieves a better outcome than that of the approved development.

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

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

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:
As detailed in the first paragraph of this assessment, Clause 4.6 does not strictly apply to a modification application, and therefore the applicant is not required to submit a written request to justify the contravention to the development standard. Notwithstanding this, the applicant addressed the development in the Statement of Environmental Effects accompanying the development application.

No further assessment on the provisions of Part (3) (a) and (b) is to be undertaken.

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

(a) the consent authority is satisfied that:

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

Comment:
N/A refer discussion at Part (3) (a) and (b).

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

Comment:

For reasons detailed above, the proposal is considered to be consistent with the objectives of the B1 Neighbourhood Centre zone in the WLEP 2011.

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

Comment:
Clause 4.6(4) (b) requires that the concurrence of the Director-General has been obtained, however, Clause 4.6 does not strictly apply to the development. The parent DA Assessment Report concluded with the following remarks regarding the concurrence of the Director-General:

As the height variation exceeds 10% it is not possible to assume the concurrence of the Director-General. Concurrence can now only be assumed if the consent authority (i.e Northern Beaches Local Planning Panel/or Sydney North Planning Panel) has first considered the following issues:

• *Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.*
The applicant and Council's Officers are of the opinion that there are no matters of significance for State or regional environmental planning as a consequence of the variation.

• *The public benefit of maintaining the development standard.*
In the circumstances of this particular development application, it is considered that there is no discernible or significant public benefit in maintaining the development standard given the overall consistency with the streetscape, existing development on site and negligable amenity impact. Therefore, variation to the standard will allow for a greater architectural aesthetic from the public domain.

The above is supported by Council's Officers.

The other consideration is whether there are any other matters which are required to be taken into consideration before granting consent. In the opinion of Council's Officers, there are not considered to be any other matters that are required to be taken into consideration. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of Buildings Development Standard can be assumed by the Northern Beaches Local Planning Panel.

Therefore, whilst the additional height to the proposed building is not the subject of a Clause 4.6 assessment, and thereby negates the requirement to be determined by the Northern Beaches Local Planning Panel (**NBLPP**), other criteria triggers the application to

be determined by this Panel.

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B5 Side Boundary Setbacks	South - Merit Assessment	Nil	No change	Yes
	East - Merit Assessment	22.7m	No change	Yes
B7/B8 Front Boundary Setbacks	Ocean Street - Merit Assessment	3.5m	No change	Yes
B7/B8 Secondary Front Boundary Setbacks	Malcolm Street - Merit Assessment	2.05m	No change	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B8 Merit assessment of front boundary setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
B10 Merit assessment of rear boundary setbacks	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C8 Demolition and Construction	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes

Detailed Assessment

D9 Building Bulk

It is considered that the additional height proposed as a part of this application will not cause any excessive or unreasonable bulk and scale when viewed from the public domain or surrounding properties. The scope of structures is consolidated within a small footprint and integrates with the overall design, rather than appearing as arbitrary structural elements.

D18 Accessibility

The proposed extension of the lift is to enable equitable access to all persons of varying mobility to the common roof terrace of the building.

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

Northern Beaches Council Contributions Plan 2018

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any

unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

The application is referred to the Northern Beaches Local Planning Panel (**NBLPP**) as the parent development application was determined by the same Panel, the application involves SEPP 65, and the Height of Buildings is subject to increase greater by more than 10% of the permitted height limit, and above what has previously been approved on the site.

This modification application lodged pursuant to Section 4.55 (2) of the Environmental Planning and Assessment Act 1979 is considered to be substantially the same development as that approved under DA2017/1136 and is deemed to be appropriate for the site.

The core component of the development application is for the increase in the height of the lift shaft from RL20.850 (existing and approved) to RL21.51, equating to a difference of 0.66m. This increase is to provide equitable access to the roof terrace of the building for persons of varying mobility in accordance with the relevant accessibility requirements.

In addition to the increase in lift height, a small glazed lobby is proposed to provide weather access, the existing stairwell covered to provide weather access, minor internal reconfiguration of an approved unit is proposed, and the air conditioning units and associated screening servicing the development is relocated in accordance with Condition 2 of DA2017/1136.

There is no discernible impact caused by or from the development by virtue of visual bulk, view loss, privacy or overshadowing. An assessment against the provisions of Clause 4.6 of the WLEP 2011 (whilst not strictly applying to a Section 4.55 (2) application) demonstrates that the development achieves consistency with the zone objectives and the objectives of the Height of Buildings development standard.

This Assessment Report for MOD2018/0534 concludes with a recommendation for approval for the NBLPP's consideration.
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. Mod2018/0534 for Modification of Development Consent DA2017/1136 granted for alterations and additions to a shop top housing development on land at Lot CP SP 89359,209 - 211 Ocean Street, NARRABEEN, subject to the conditions printed below:

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**
S4.55-A-102 Rev. A	14 November 2018	Quattro Architecture
S4.55-A-103 Rev. A	14 November 2018	Quattro Architecture
S4.55-A-104 Rev. A	14 November 2018	Quattro Architecture
S4.55-A-200 Rev. A	14 November 2018	Quattro Architecture
S4.55-A-201 Rev. A	14 November 2018	Quattro Architecture

b) 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 2 - Amendments to the approved plans - to read as follows:
Any screening around the air-conditioning units and exhaust duct is to be constructed of the same materials as the enclosing structure of the lift shaft.

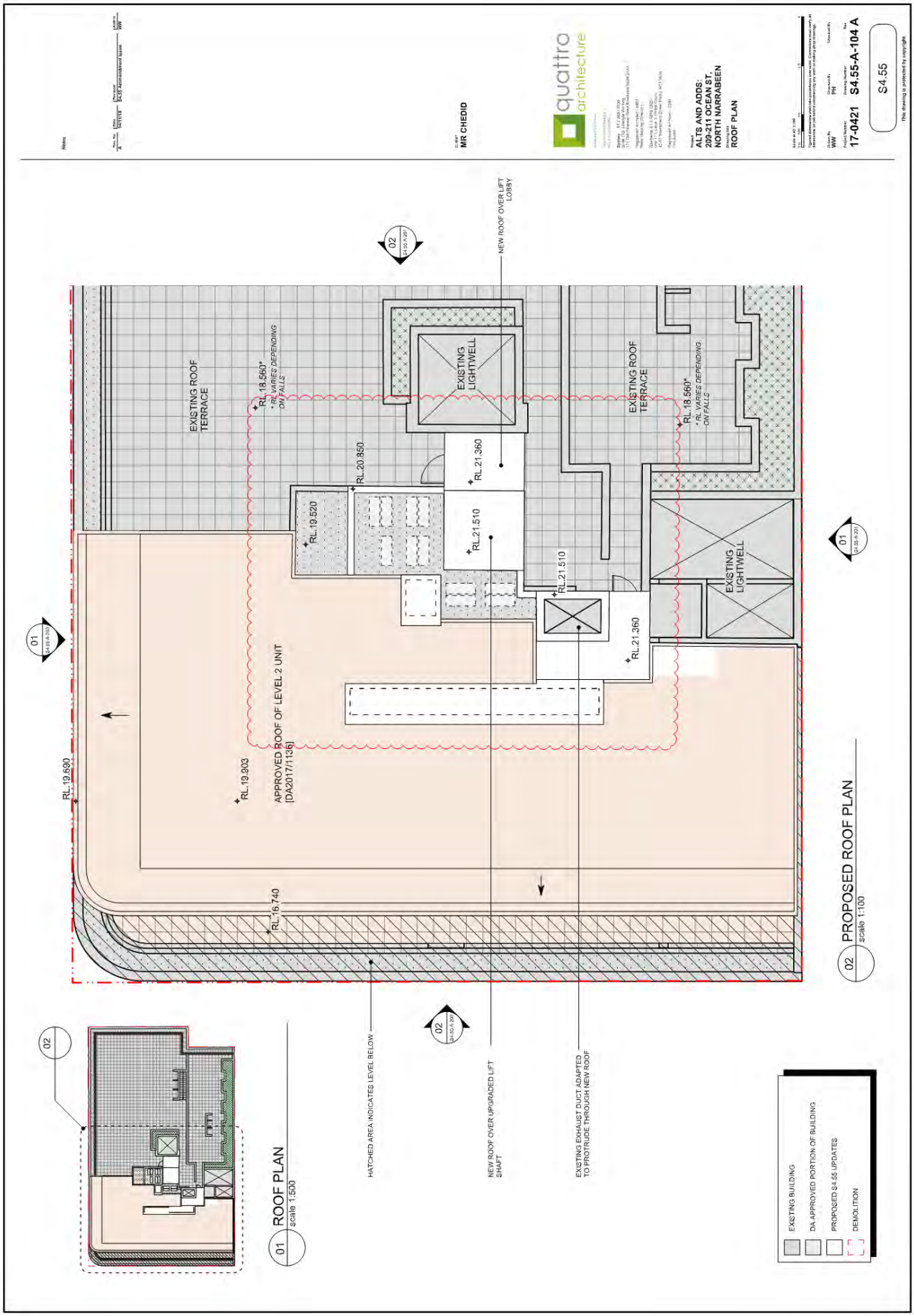
Reason: To minimise the visual impact of the development when viewed from the public domain.

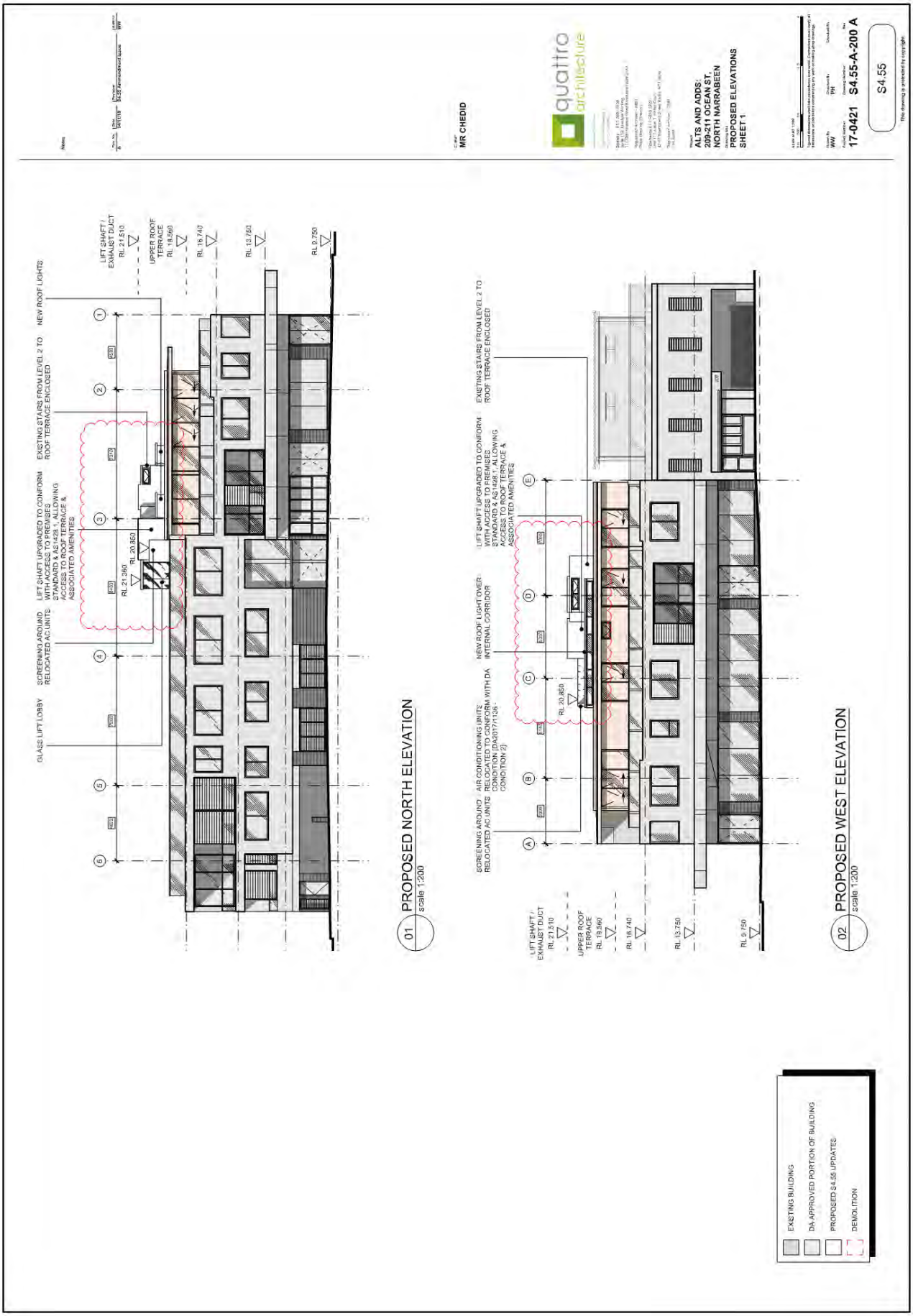
C. Add Condition 16 - Fire Safety Matters - to read as follows:
At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This 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.


Notes
Rev. No. A
Date 18/11/18
Revision S4.55 Administration issue
Drawn by WW
CLIENT
MR CHEDID
quattro architecture
Project
ALTS AND ADDS:
209-211 OCEAN ST,
NORTH NARRABEEN
Drawing title
ROOF PLAN
Issue of A1 - 1:100
Signed dimensions override proportions, one-side. Contractors must verify all dimensions on site before commencing any work or making shop drawings.
Drawn By WW
Checked By PH
Project Number 17-0421
Drawing Number S4.55-A-104 A
Rev A
S4.55
This drawing is protected by copyright
EXISTING ROOF TERRACE
RL.18.560*
* RL VARIES DEPENDING ON FALLS
EXISTING LIGHTWELL
NEW ROOF OVER LIFT LOBBY
RL.20.850
RL.21.360
RL.19.520
RL.21.510
RL.21.510
RL.21.360
EXISTING ROOF TERRACE
RL.18.560*
* RL VARIES DEPENDING ON FALLS
EXISTING LIGHTWELL
APPROVED ROOF OF LEVEL 2 UNIT [DA2017/1138]
RL.19.690
RL.19.903
RL.16.740
02 PROPOSED ROOF PLAN
scale 1:100
01 ROOF PLAN
scale 1:500
HATCHED AREA INDICATES LEVEL BELOW
NEW ROOF OVER UPGRADED LIFT SHAFT
EXISTING EXHAUST DUCT ADAPTED TO PROTRUDE THROUGH NEW ROOF
EXISTING BUILDING
DA APPROVED PORTION OF BUILDING
PROPOSED S4.55 UPDATES
DEMOLITION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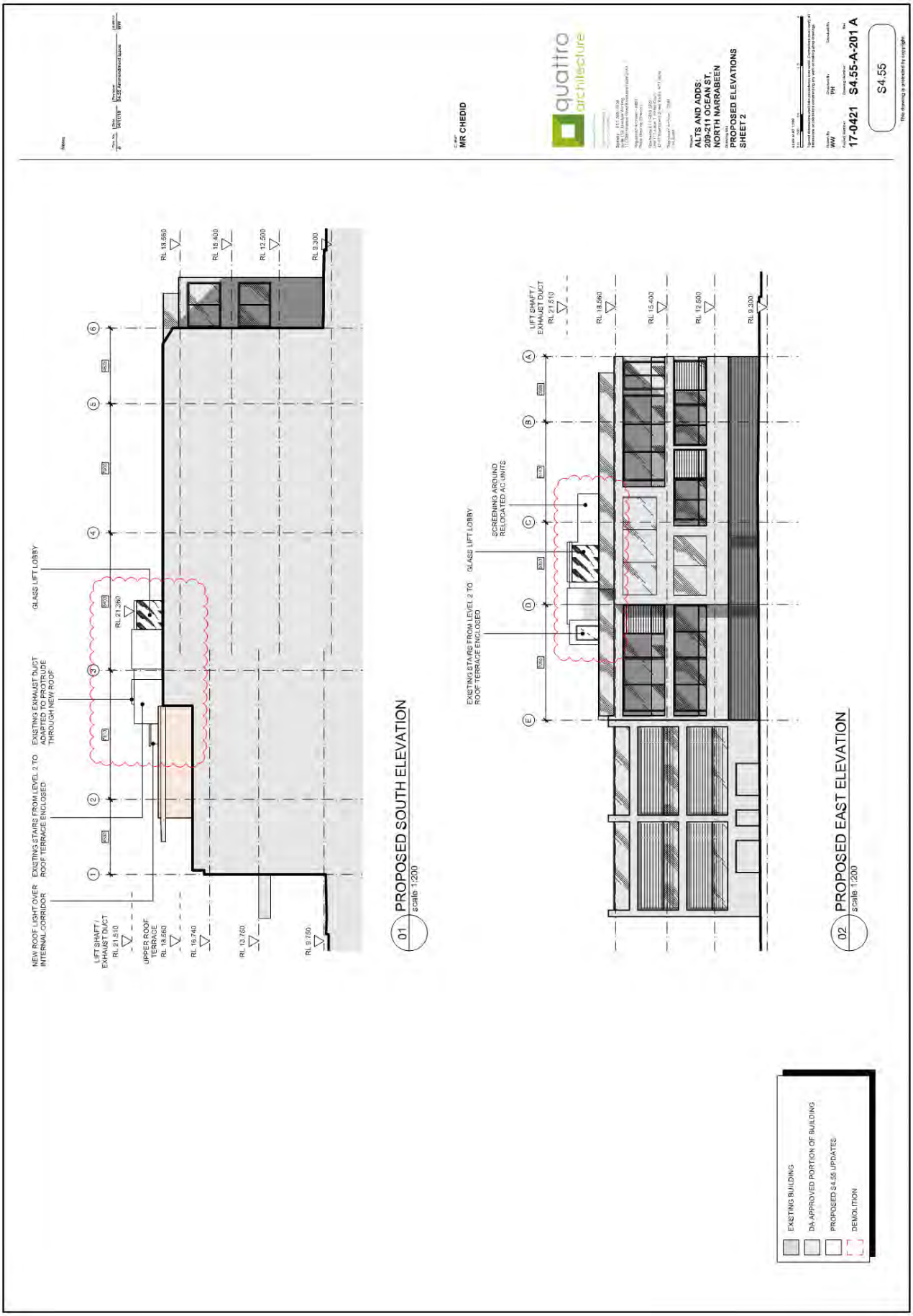
Rev. No. Date Description Drawn
A 18/11/18 S4.55 Administration issue WW
CLIENT
MR CHEDID
quattro architecture
Project
ALTS AND ADDS:
209-211 OCEAN ST,
NORTH NARRABEEN
Drawing title
PROPOSED ELEVATIONS
SHEET 1
Issue date: 18/11/18
Scale @ A1: 1:200
Drawn by
WW
Checked by
PH
Project number
17-0421
Drawing number
S4.55-A-200
Rev.
A
S4.55
This drawing is protected by copyright
GLASS LIFT LOBBY
SCREENING AROUND RELOCATED AC UNITS
LIFT SHAFT UPGRADED TO CONFORM WITH ACCESS TO PREMISES STANDARD & AS1428.1, ALLOWING ACCESS TO ROOF TERRACE & ASSOCIATED AMENITIES
EXISTING STAIRS FROM LEVEL 2 TO ROOF TERRACE ENCLOSED
NEW ROOF LIGHTS
LIFT SHAFT / EXHAUST DUCT RL 21.510
UPPER ROOF TERRACE RL 19.560
RL 16.740
RL 13.750
RL 9.750
RL 21.360
RL 20.850
01 PROPOSED NORTH ELEVATION
scale 1:200
SCREENING AROUND RELOCATED AC UNITS
AIR CONDITIONING UNITS RELOCATED TO CONFORM WITH DA CONDITION [DA2017/1136 CONDITION 2]
NEW ROOF LIGHT OVER INTERNAL CORRIDOR
LIFT SHAFT UPGRADED TO CONFORM WITH ACCESS TO PREMISES STANDARD & AS1428.1, ALLOWING ACCESS TO ROOF TERRACE & ASSOCIATED AMENITIES
EXISTING STAIRS FROM LEVEL 2 TO ROOF TERRACE ENCLOSED
02 PROPOSED WEST ELEVATION
scale 1:200
EXISTING BUILDING
DA APPROVED PORTION OF BUILDING
PROPOSED S4.55 UPDATES
DEMOLITION


Issue
Date
Description
Drawn
Issue No.
01/11/18
S4.55 Amendment issue
WW
CLIENT
MR CHEDID
quattro architecture
Project
ALTS AND ADDS:
209-211 OCEAN ST,
NORTH NARRABEEN
Drawing title
PROPOSED ELEVATIONS
SHEET 2
Issued at A1 size
Drawn By
WW
Checked By
PH
Project number
17-0421
Drawing number
S4.55-A-201 A
Issue
A
S4.55
This drawing is protected by copyright
NEW ROOF LIGHT OVER INTERNAL CORRIDOR
EXISTING STAIRS FROM LEVEL 2 TO ROOF TERRACE ENCLOSED
EXISTING EXHAUST DUCT ADAPTED TO PROTRUDE THROUGH NEW ROOF
GLASS LIFT LOBBY
LIFT SHAFT / EXHAUST DUCT
RL 21.510
UPPER ROOF TERRACE
RL 18.560
RL 21.260
RL 16.740
RL 13.760
RL 9.750
RL 18.560
RL 15.400
RL 12.500
RL 9.300
01 PROPOSED SOUTH ELEVATION
scale 1:200
EXISTING STAIRS FROM LEVEL 2 TO ROOF TERRACE ENCLOSED
GLASS LIFT LOBBY
SCREENING AROUND RELOCATED AC UNITS
LIFT SHAFT / EXHAUST DUCT
RL 21.510
RL 18.560
RL 15.400
RL 12.500
RL 9.300
02 PROPOSED EAST ELEVATION
scale 1:200
EXISTING BUILDING
DA APPROVED PORTION OF BUILDING
PROPOSED S4.55 UPDATES
DEMOLITION

ITEM 3.3	**MOD2018/0494 - 69 PITTWATER ROAD, MANLY - MODIFICATION OF DEVELOPMENT CONSENT DA181/2012 GRANTED FOR DEMOLITION OF THE EXISTING BUILDINGS AND CONSTRUCTION OF A MIXED USE DEVELOPMENT**
REPORTING OFFICER	**Rodney Piggott**
TRIM FILE REF	**2018/750396**
ATTACHMENTS	**1 Assessment Report** **2 Plans**

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel the original development application was determined by an independent panel.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. MOD2018/0494 for Modification of Development Consent DA181/2012 granted for demolition of the existing buildings and construction of a mixed use development at Lots A and B DP 307310 and Lot 1 DP 638360, 69 Pittwater Road, Manly subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0494

Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot A DP 307310, 69 Pittwater Road MANLY NSW 2095 Lot B DP 307310, 69 Pittwater Road MANLY NSW 2095 Lot 1 DP 368360, 69 Pittwater Road MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA181/2012 granted for Demolition of the existing buildings and construction of a mixed use development
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre Manly LEP2013 - Land zoned B2 Local Centre Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Makawi Manly Pty Ltd
Applicant:	Benson Mccormack Architects Pty Ltd

Application lodged:	12/09/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	03/11/2018 to 17/11/2018
Advertised:	03/11/2018
Submissions Received:	2
Recommendation:	Approval

ASSESSMENT INTRODUCTION

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

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

to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.3 Height of buildings
Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 5 Special Character Areas and Sites

SITE DESCRIPTION

Property Description:	Lot A DP 307310 , 69 Pittwater Road MANLY NSW 2095 Lot B DP 307310 , 69 Pittwater Road MANLY NSW 2095 Lot 1 DP 368360 , 69 Pittwater Road MANLY NSW 2095
Detailed Site Description:	The subject site consists of three (3) allotments located on the eestern side of Pittwater Road, Manly. The site is irregular in shape with a frontage of 28.895m along Pittwater Road, and an average depth of 50.5m. The site has a surveyed area of 1,404m². The site is located within the B2 Local Centre zone and is currently under construction for the works approved under Development Consent No. 181/2012. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by commercial premises and residential flat buildings.

Map:

SITE HISTORY

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

- DA0138/2011 for Demolition of the existing buildings, construction of two separate buildings consisting of a three (3) level and five (5) level buildings for a mixed use development comprising of 150m2 of retail/ commercial space, thirty-eight (38) dwellings, short term accommodation, two level basement car park with forty-four (44) spaces and strata subdivision was refused on 15 March 2012 by the former Manly Independent Assessment Panel.
- DA0181/2012 Part 1 for Demolition of the existing buildings, construction of two (2) separate buildings consisting of a three (3) level and a five (5) level building for a mixed use development comprising of three (3) commercial spaces, thirty six (36) residential apartments and two (2) level basement car park with forty four (44) spaces was approved on 18 October 2012 by the former Manly Independent Assessment Panel.
- DA0181/2012 Part 2 for Section 96 to modify approved Demolition of the existing buildings, construction of two (2) separate buildings consisting of a three (3) level and a five (5) level building for a mixed use development comprising of three (3) commercial spaces, thirty-six (36) residential apartments and two (2) level basement car park with forty four (44) spaces – involving extension to basement level, additional of balconies, modifications to windows and internal reconfiguration was approved on 17 March 2016 by the former Manly Independent Assessment Panel.
- DA0181/2012 Part 3 for Section 96 to modify approved demolition of the existing buildings, construction of two (2) separate buildings consisting of a three (3) level and a five (5) level building for a mixed use development comprising of three (3) commercial spaces, thirty six (36) residential apartments and two (2) level basement car park with forty four (44) spaces – involving changes to the basements, fire stairs, lift, walls, windows, entry stairs, balconies, landscaping, addition of air conditioning condensers, removal of awnings, increase walkway, increase in floor areas, internal reconfigurations, new balconies, new doors, new fire shutters, extension of screens, and slabs was approved on 16 March 2017 by the former Northern Beaches Independent Assessment Panel.
- DA181/2012 Part 4 for Section 96 to modify approved Demolition of the existing buildings,

construction of two (2) separate buildings consisting of a three (3) level and a five (5) level building for a mixed use development comprising of three (3) commercial spaces, thirty six (36) residential apartments and two (2) level basement car park with forty four (44) spaces approved on 08 November 2017 by the former Northern Beaches Independent Assessment Panel.

- Application Mod2018/0053 for Modification of Development Consent DA0181/2012 granted for Demolition of existing buildings, construction of a mixed use development was approved on 8 February 2018 under staff delegation.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the following modifications to Development Consent No. 181/2012:

- Construction of basement storage areas (two general and one to house archival records relating to the heritage of the site);
- Modification of courtyard privacy screening for units 103B and 104B;
- Minor internal reconfiguration to units 205A and 305A;
- Removal of service meter enclosures (service meters being screen previously relocated to basement);
- Changes to balustrades in the lobbies of Building B Level 2, 3, and 4;
- Relocation of laundries for units 301B and 401B;
- Modification of kitchens for units 202B and 402B;
- Removal of screened plant enclosure on the roof of Building B (air conditioning units being screened previously relocated to individual unit balconies);
- Reduction in external northern screening to Building B;
- Modification to northern windows at Levels 1 and 2 to units 102B and 103B;
- Relocation of privacy blades on eastern balconies of Building B;
- Increased sill height of northern facade of balconies for units 205A and 305A; and
- Obscure glazing added to the bedrooms at Level 2 of units 102B and 103B.

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 DA181/2012, 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 DA181/2012.
(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 DA181/2012 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environmental Plan 2013 and Manly Development Control Plan 2013.
(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 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 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)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application. Clauses 54 and 109 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. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. 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 clause is not relevant to this application. 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 in the original consent. 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. 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 matter has been addressed via a condition in the original consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental	(i) **Environmental Impact** The environmental impacts of the proposed

Section 4.15 'Matters for Consideration'	Comments
impacts on the natural and built environment and social and economic impacts in the locality	development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Public Exhibition" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

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 2 submission/s from:

Name:	Address:
Ms Keinwen Marion Shephard	34 Denison Street MANLY NSW 2095
Mr Alan John Butler	93 Pittwater Road MANLY NSW 2095

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

- Short-term accommodation causes noise and amenity disturbance, and undesirable behaviour.
- Two additional units will make parking more difficult and will increase noise and disturbance.
- The modifications sought by the application are unclear.

The matters raised within the submissions are addressed as follows:

- Short-term Accommodation
  Comment:
  No short-term accommodation is approved on site, nor sought under this modification application.

- Increase in Units
  Comment:
  No additional units are sought under this modification application.

- Clarification of Modifications
  Comment:
  The submitted Statement of Environmental Effects details the modifications sought under this application. The objecting party has been directed to this document, and has been provided with a plain English summary of the modifications sought, as requested.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	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. 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.
Strategic and Place Planning (Heritage Officer)	Further to a review of available documents, The application is a S.96, substantially the same as the originally approved DA. Therefore, it is fair to assess that impact of the current proposal will be closely similar to the impact of the previously approved DA. Based on the above, I have no objection to this proposal from heritage perspective and deem heritage conditions not required. **Proposal is acceptable without conditions.** Kind Regards Zoran Popovic| Heritage Adviser

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

External Referral Body	Comments
	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 65 - Design Quality of Residential Apartment Development

SEPP 65 and the ADG apply to mixed use developments, such as in this case. The proposed modifications do not alter the approved development's approved compliance with SEPP 65 and the ADG.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	15m	15.15m	Unchanged	1%	No (Unchanged)
Floor Space Ratio	2:1 (2,808sqm)	2.049:1 (2,876.95sqm)	2.049:1 (2,877.95sqm)	2.49%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes

Detailed Assessment

4.3 Height of buildings

The proposed development makes no alteration to the approved height of building non-compliance.

4.4 Floor space ratio

See detailed comment in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the Manly LEP 2013.

4.6 Exceptions to development standards

Whilst the modification application will result in a floor space ratio that exceeds the maximum permitted

by Clause 4.4 (Floor space ratio) of the Manly LEP 2013, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under Section 4.55 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant s.4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application. Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. Notwithstanding that Clause 4.6 does not apply to Section 4.55 applications, the merits of the departure have been assessed below with regards to the objectives of the floor space ratio development standard.

Description of non-compliance:

Requirement:	2:1 (2,808sqm)
Approved:	2.049:1 (2,876.95sqm)
Proposed:	2.049:1 (2878sqm)
Is the planning control in question a development standard?	YES
If numerical enter a % variation to requirement	2.49%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* and an assessment of the request to vary the development standard in accordance with the requirements of Clause 4.6 is provided below:

Clause 4.6 Exceptions to development standards:

(1) The objectives of this clause are as follows:
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

Comment:

The Clause 4.4 Floor space ratio development standard is not expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

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

(a) the consent authority is satisfied that:
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

Cl 4.6 (4)(a)(i) (Justification) Assessment:

Cl 4.6 (4)(a)(i) requires the consent authority to be satisfied that the Applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6 (3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:
As above, a written request is not required.

Cl 4.6 (4)(a)(ii) (Public Interest) Assessment:

Cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

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

Comment:
In considering whether or not the proposed development will be in the public interest consideration must be given to the underlying objectives of the floor space ratio development standard and the objectives of the B2 Local Centre zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of cl 4.4 Floor space ratio development standard are:

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
Comment:
The additional residential gross floor area resulting from the proposed modifications to the approved development is centrally located, negligible in nature, and does not add to the bulk of the building as viewed from the street. The development satisfies this objective.

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

Comment:
The additional gross floor area resulting from the proposed modifications to the approved development does not obscure any landscape or townscape features. The development satisfies this objective.

(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,
Comment:
The additional gross floor area resulting from the proposed modifications to the approved development is negligible in nature and not visible from the street, so will not impact upon the visual relationship between new development and the existing character and landscape of the area. The development satisfies this objective.

(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,
Comment:
The additional gross floor area resulting from the proposed modifications to the approved development is negligible in nature and not visible from the street, so does not impact upon the use or enjoyment of adjoining land or the public domain. The development satisfies this objective.

(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres,
Comment:
The additional gross floor area resulting from the proposed modifications to the approved development is negligible in nature and not visible from the street, so does not impact upon the viability of the B2 Local Centre zoning of the land. The development satisfies this objective.

Conclusion:
The proposed development satisfies the underlying objectives of the floor space ratio development standard.

Zone Objectives

The underlying objectives of the B2 Local Centre zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
  Comment:
  The proposed modifications to the approved development retain the retail premises at the ground floor in order to serve the needs of the people who live in, work in and visit the local area. The development satisfies this objective.

- *To encourage employment opportunities in accessible locations.*
  Comment:
  The proposed modifications to the approved development retain the approved retail premises, which provide employment opportunities. The development satisfies this objective.

- *To maximise public transport patronage and encourage walking and cycling.*
  Comment:
  The subject site is located on the main bus route to, and within walking distance of, the Manly CBD and Manly ferry wharf. The development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B2 Local Centre zone.

Cl 4.6 (4)(b) (Concurrence of the Secretary) Assessment:
Cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.
Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

Manly Development Control Plan

Built Form Controls
The proposed modifications do not alter the site's compliance with the built form controls under Part 4 Development Controls of the Manly Development Control Plan 2013.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	Yes	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.2 Pittwater Road Conservation Area	Yes	Yes

Detailed Assessment

5 Special Character Areas and Sites

The proposed development is consistent with the Special Character Areas and Sites objectives and provisions in relation to the Pittwater Road Conservation Area. The proposed development is not considered to have any unreasonable impact on the heritage significance of the area. In regards to the visual impact on the streetscape, the modifications will not result in any unreasonable changes to the appearance of the building. It is noted that Council's Heritage Advisor raised no objections to the proposal.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0494 for Modification of Development Consent DA181/2012 granted for Demolition of the existing buildings and construction of a mixed use development on land at Lot A DP 307310,69 Pittwater Road, MANLY, Lot B DP 307310,69 Pittwater Road, MANLY, Lot 1 DP 368360,69 Pittwater Road, MANLY, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
A-0101 Basement 2	17 August 2018	Benson McCormack Architecture
A-0103 Level 1	17 August 2018	Benson McCormack Architecture
A-0104 Level 2	17 August 2018	Benson McCormack Architecture
A-0105 Level 3	17 August 2018	Benson McCormack Architecture
A-0106 Level 4	17 August 2018	Benson McCormack Architecture
A-0107 Level 5	17 August 2018	Benson McCormack Architecture
A-0108 Roof	17 August 2018	Benson McCormack Architecture
A-0202 North Elevation	17 August 2018	Benson McCormack Architecture
A-0203 South Elevation	17 August 2018	Benson McCormack Architecture
A-0204 West Elevation	17 August 2018	Benson McCormack Architecture
A-0221 Section West	17 August 2018	Benson McCormack Architecture
A-0223 Section North	17 August 2018	Benson McCormack Architecture

b) 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. (DACPLB01)

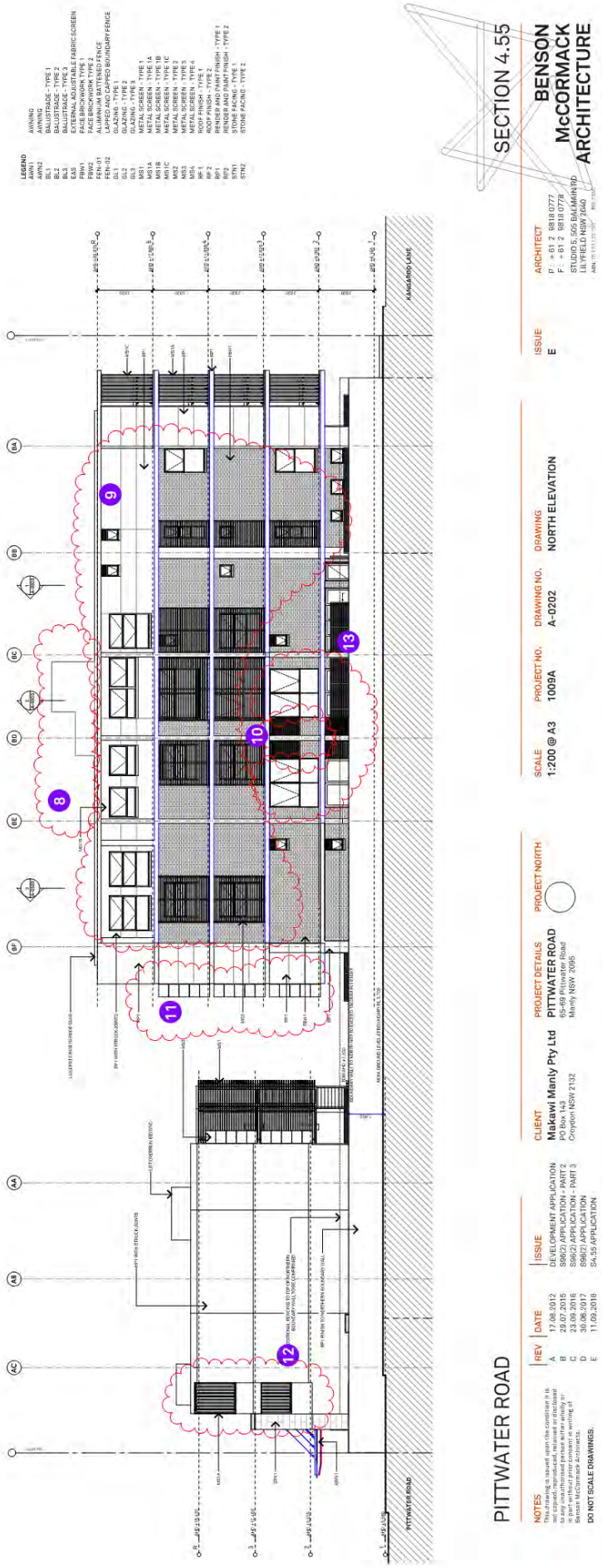
B. Add Condition 74a Fire Safety Matters to read as follows:

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. (DACPLF07)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BL2 BALUSTRADE - TYPE 2
BL3 BALUSTRADE - TYPE 2
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FBW1 FACE BRICKWORK TYPE 1
FBW2 FACE BRICKWORK TYPE 2
FEN-01 ALUMINIUM BATTENED FENCE
FEN-02 LAPPED & CAPPED TIMBER BOUNDARY FENCE
GL1 GLAZING - TYPE 1
GL2 GLAZING - TYPE 2
GL3 GLAZING - TYPE 3
MS1 METAL SCREEN - TYPE 1
MS1A METAL SCREEN - TYPE 1A
MS1B METAL SCREEN - TYPE 1B
MS1C METAL SCREEN - TYPE 1C
MS2 METAL SCREEN - TYPE 2
MS3 METAL SCREEN - TYPE 3
MS4 METAL SCREEN - TYPE 4
RF1 ROOF FINISH - TYPE 1
RF2 ROOF FINISH - TYPE 2
RPF1 RENDER AND PAINT FINISH - TYPE 1
RPF2 RENDER AND PAINT FINISH - TYPE 2
STN1 STONE FACING - TYPE 1
STN2 STONE FACING - TYPE 2
SECTION 4.55
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ISSUE
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DRAWING
NORTH ELEVATION
DRAWING NO.
A-0202
PROJECT NO.
1009A
SCALE
1:200 @ A3
PROJECT NORTH
PROJECT DETAILS
PITTWATER ROAD
65-69 Pittwater Road
Manly NSW 2095
CLIENT
Makawi Manly Pty Ltd
PO Box 143
Croydon NSW 2132
ISSUE
DEVELOPMENT APPLICATION
S96(2) APPLICATION - PART 2
S96(2) APPLICATION - PART 3
S4.55 APPLICATION
DATE
17.08.2012
28.07.2015
23.09.2016
30.08.2017
11.09.2018
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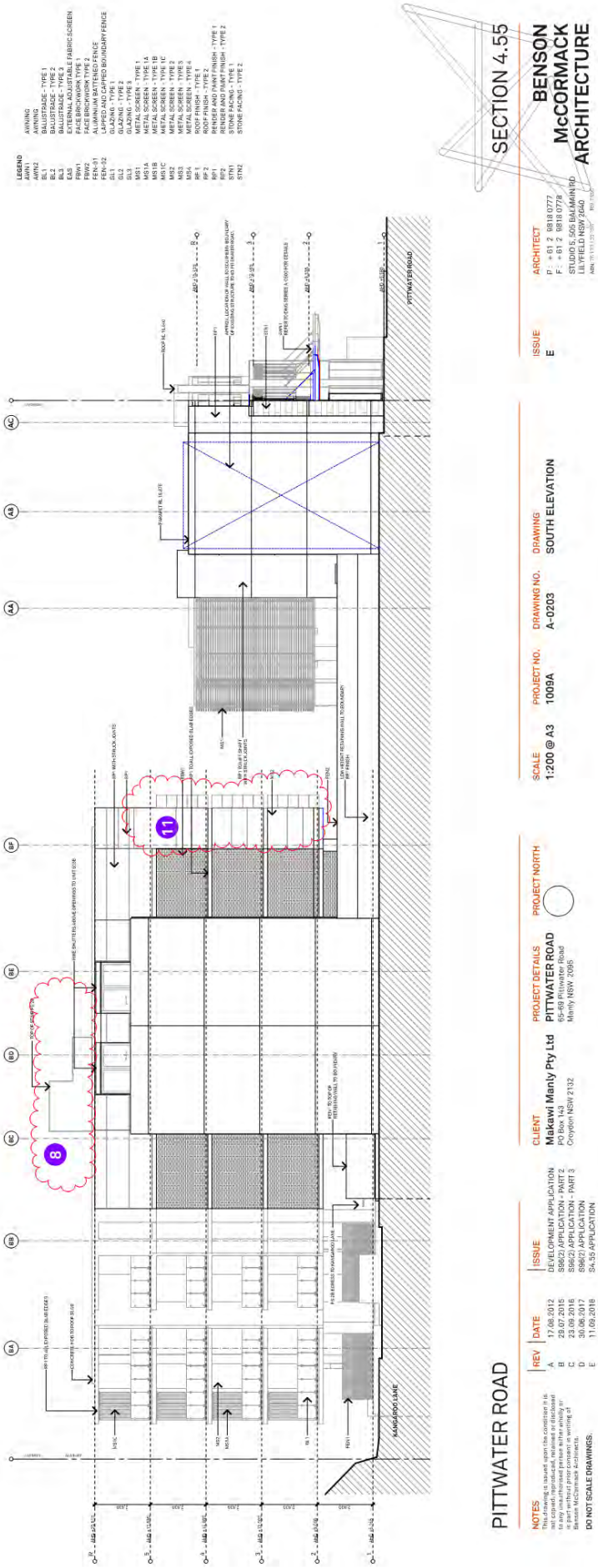
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SOUTH ELEVATION
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PROJECT NORTH
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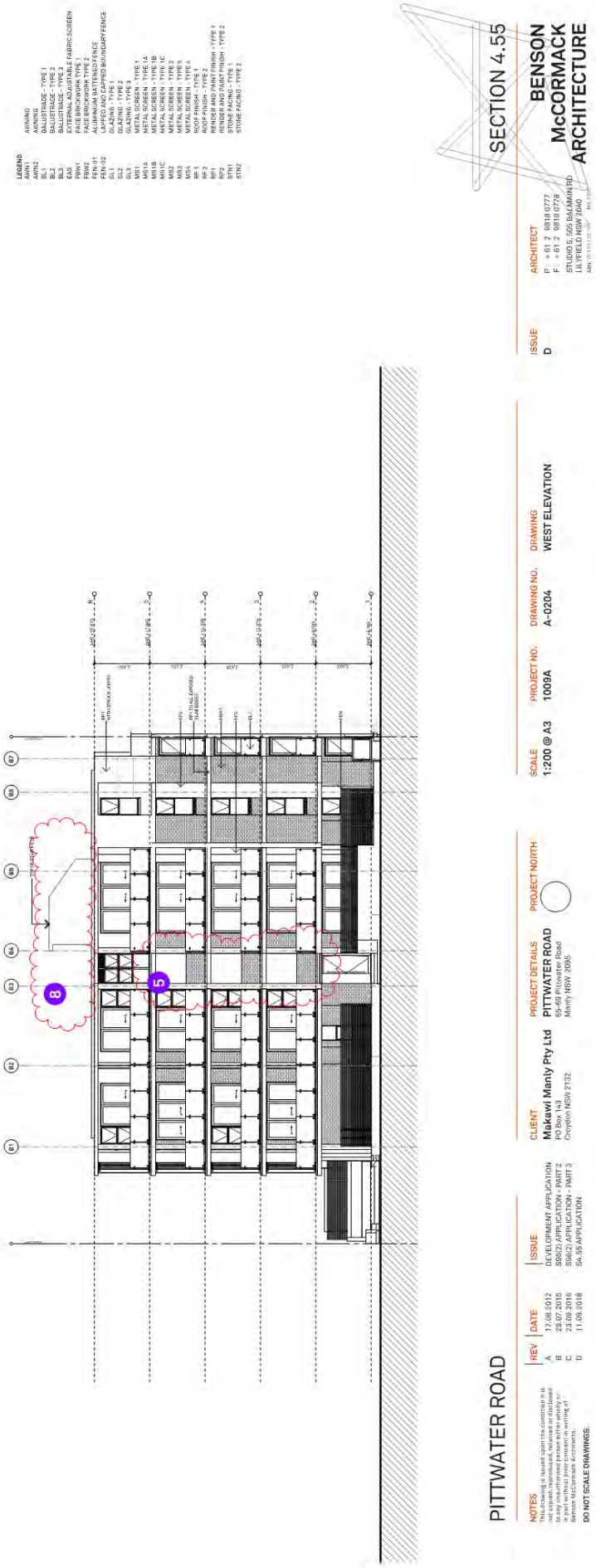
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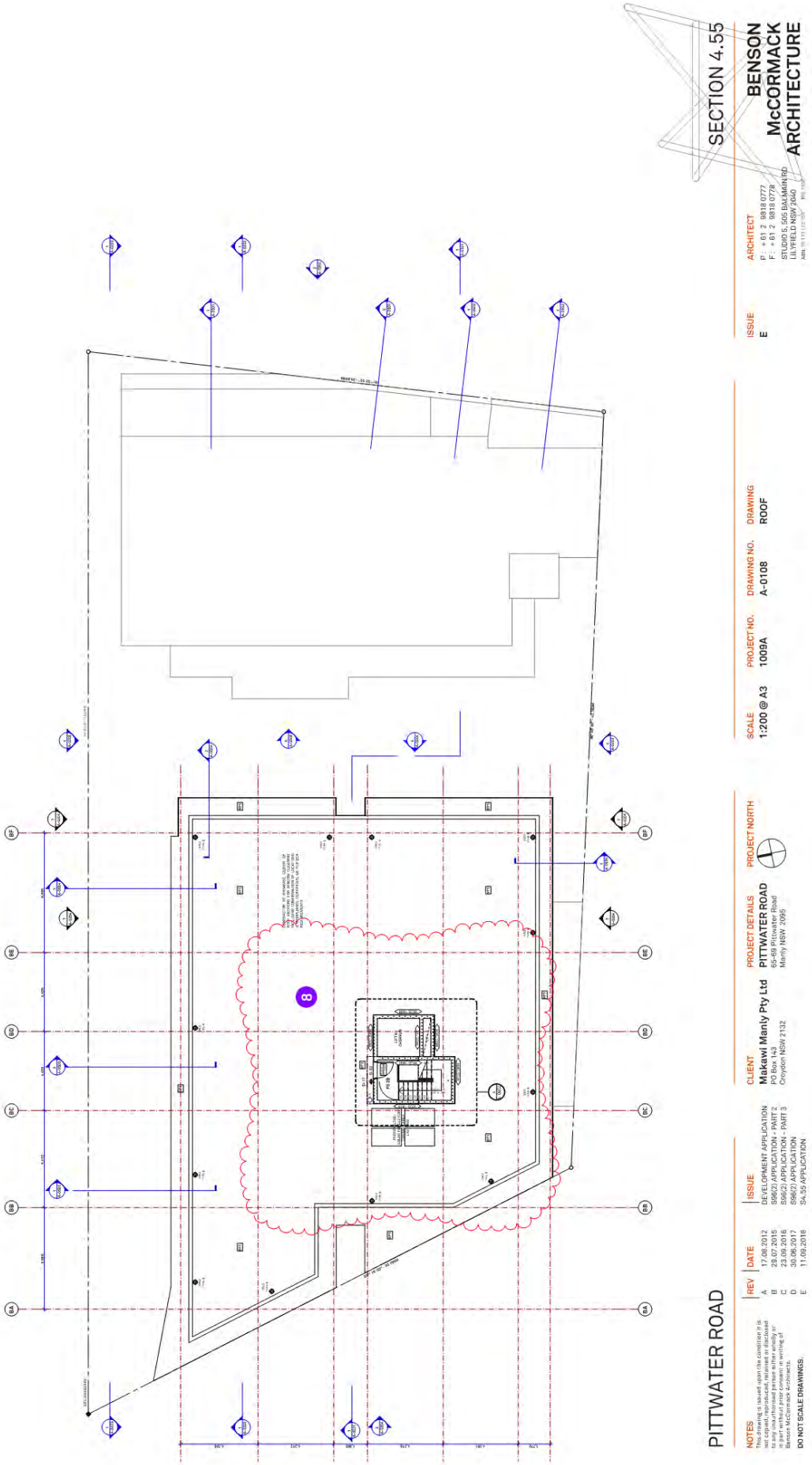
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ITEM 3.4	**MOD2018/0193 - 18-19 THE STRAND, DEE WHY - MODIFICATION OF DEVELOPMENT CONSENT DA2005/1227 GRANTED FOR SHOP TOP HOUSING, RESTAURANT, CAFE, RETAIL SHOP AND BASEMENT PARKING**
REPORTING OFFICER	**Anna Williams**
TRIM FILE REF	**2018/750618**
ATTACHMENTS	**1 Assessment Report**
	2 Plans

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the original application was determined by an independent panel

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RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. MOD2018/0193 for Modification of Development Consent DA2005/1227 granted for shop top housing, restaurant, cafe, retail shop and basement parking at Lot 10 Sec 8 DP 6953, 18-19 The Strand, Dee Why subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0193

Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 10 DP 6953, 18 - 19 The Strand DEE WHY NSW 2099
Proposed Development:	Modification of Development Consent DA2005/1227 granted for shop top housing, restaurant, cafe, retail shop and basement parking
Zoning:	Warringah LEP2011 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Umberto Mario Russo UM & SD Russo Pty Ltd
Applicant:	Find Your Builder Pty Ltd

Application lodged:	16/04/2018
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Mixed
Notified:	04/05/2018 to 08/06/2018
Advertised:	05/05/2018
Submissions Received:	4
Recommendation:	Approval

ASSESSMENT INTRODUCTION

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

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

groups in relation to the application;

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - F1 Local and Neighbourhood Centres

SITE DESCRIPTION

Property Description:	Lot 10 DP 6953 , 18 - 19 The Strand DEE WHY NSW 2099
Detailed Site Description:	The site is known as Lot 10, DP 6953, No. 18-19 The Strand, Dee Why. The site is located on the southern corner of The Strand and Howard Avenue. The site is situated opposite Dee Why Beach Public Reserve and ocean beach. The site is generally rectangular in shape, except for the splay road corner with an area of 762 square (sqm), a frontage to The Strand of 13.76 metres (m) and a frontage to Howard Avenue of 42.72m. Vehicular access is obtained from a "laneway" off Howard Avenue that comprises a private right-of-way (ROW) for lane access to the adjoining properties to the south of the subject site. The laneway does not have legal or trafficable through access to Oaks Avenue. The site is adjoined on its southern side by a shop top housing development constructed under DA 2005/328. On the western side, the site is adjoined by an older style red brick 3 storey walk-up residential flat building with views across the site to the ocean. The northern corner of Howard Avenue and The Strand is developed as an older style 3 storey shop top housing building. The site is presently developed as a 3 storey mixed commercial/residential building, comprising a restaurant known as "Stella Blu" fronting Howard Avenue and The Strand. The building also contains a small cafe fronting Howard Avenue and 3 residential units (1 x 2 bed unit, 1 x 3 bed unit and 1 x 4 bed unit) occupying the upper two levels. A ground floor level carpark is located to the rear of the commercial uses, which comprising 10 spaces (4 restaurant and 6 residential), a loading area and access from the laneway at the rear of the site. The site is situated within the Dee Why Beach commercial precinct, which is predominantly comprised of shop top housing development, generally 3 to 4 storeys in height and containing restaurants, shops and cafes at street level and

	residential units on the upper levels. These developments are mostly orientated to the east to overlook the Dee Why Beach parkland and ocean beach.

Map:

SITE HISTORY

Development Application No.DA2005/1227 was approved by Council on 10 April 2007, for the demolition of the existing building and construction of a shop top housing development comprising a restaurant, cafe, retail shop, 9 residential units and basement carparking for 32 cars.

Under this application, the consent provided for the complete demolition of the existing building and construction of a 4 storey shop top housing development comprising:

- 2 levels of basement carparking with parking for 32 cars; lifts, stairs, ancillary storage space and amenities for the restaurant;
- Restaurant, cafe, shop, loading dock, cafe store, garbage facilities, restaurant entry lobby, access ramp to basement carpark levels and 2x internal lifts at ground floor;
- 9 residential units on the upper levels.

Council extended the validity period of Consent No.DA2005/1227 by 12 months, on the 12 August 2009, and Council acknowledged "physical commencement" of the development consent on 11 May 2012, on the basis of Geotechnical work, Acoustic work and Survey works having been undertaken pursuant to the development consent.

Modification Application No.MOD2009/0343 to modify DA2005/1227 was approved on 5 May 2010. The modification included the deletion of the lower basement carparking level, deletion of auxiliary restaurant storage space, reducing the area of café / restaurant, change to the internal configuration of selected units & service spaces, re-instatement of a roof top area, change to balcony spaces, change to utility service elements, increase the number of units from 9 to 10.

There have been various other development (DA) applications and modifications (MOD) applications on

the site, however they do not relate to the current design proposal under MOD2018/0193

PROPOSED DEVELOPMENT IN DETAIL

The modification of consent is described by the applicant as follows:

- Basement B2 - Provide additional basement parking level. (20 Parking spaces (including 2 visitor spaces:1 standard & 1 DDA space).
- Basement B1 - Modify parking layout including ramp to B2 level, restaurant auxiliary (back-of-house) space, staff change room and bathroom, lift access, storage, relocate fire access and relocate customer toilets.
- Ground Level GL - Relocate fire egress, relocate bathroom to B1, Reconfigure (enlarge) restaurant / retail areas, fire hydrant, ATM facility, lift access, waste storage rooms, general storage & DDA access changes.
- Apartment Level L1 - Modify internal unit layouts, including bedroom mix, improve internal accessibility and internal ceiling height increase.
- Apartment Level L2 - Modify internal unit layouts, including bedroom mix, improve internal accessibility and internal ceiling height increase.
- Apartment Level L3 - Modify internal unit layouts to increase number of smaller units (2 large Units into 4 smaller Units), improve internal accessibility. Internal ceiling height increase.
- Roof Level RLvl - Add solar panels, increase roof deck area around pool, restrict access from within Unit 9 only. Locate air conditioner motors from L1 to L3 light well to the central roof top area.
- Elevations - Modify ground floor façade and street façade to L2 & L3. Selected window changes and minor changes to suit internal layout modifications.

Changes to the building RL's are:	
Proposed Floor Levels	**Existing Approved Floor Levels as per MOD2009/0343**
Lower Basement Level B2 (Parking, storage, stair & lift access) RL0.03	Reinstated from MOD 2009/0343 that deleted Level B2.
Upper Basement Level B1 (Parking / ancillary service rooms, lift) RL3.68	No change B1 - RL3.68
Ground Level GL (Shops / restaurant / service rooms, loading dock) RL6.91	Change from - RL6.61 to RL7.10
Level L1(Apartments, lift & stair access) RL10.51	No change from - RL10.51

Level L2 (Apartments) RL13.52	Change from - RL 13.41	
Level L3 (Apartments, lift & stair access) RL16.54	Changed from - RL16.31	
Roof Level (not including lift overrun) RL19.55	Changed from - RL19.21	
Maximum height: RL20.28 (planter box and pool coping - 7 centimetre (cm) increase)	Changed from - RL20.21* (as per DA2005/1227) *Minor wall sections elements of roof parapet planter box, pool coping and the like exceed 13m height.	
Revised Unit Mix		
Bedrooms	**Approved** (including previous Mod)	**Proposed** by current modification
1 Bedroom	3	1
2 Bedrooms	3	8
3 Bedrooms	3	3
4 Bedrooms	1	0
Units Total	**10**	**12**
Residential Carparking	15 resident car spaces	24 resident car space
Commercial Carparking (staff / customer)	9 car spaces + loading dock	9 car spaces + truck loading dock
Visitor parking (including disabled persons visitor)	0 car spaces	2 car spaces
Carparking Total (including visitor / disabled persons parking)	24 car spaces + loading dock	35 car spaces + loading dock

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 DA2005/1227 (as modified), 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 modified 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 DA2005/1227 (as modified).
(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 DA2005/1227 required *General Terms of Approval* (GTA) from *Water NSW* (Department of Primary Industry). The GTA requirements remain applicable and after being consulted *Water NSW* has not advised of any change to the existing GTA's.
(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 modification application has been publicly exhibited in accordance with the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2000*, *Warringah Local Environmental Plan 2011* (WLEP) and *Warringah Development Control Plan 2011* (WDCP).
(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 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate (DVC) from the building designer at lodgement of the development application. This documentation was submitted with the original application and a revised DVC was submitted with the modification application. Clauses 54 and 109 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. Additional information was requested to address the waste bin room design and amenity issues for the light well / view lines relating to adjacent land. The applicant provided satisfactory plan revisions, dated 31 August 2018, and 21 November 2018. The plan revisions are to address and clarify minor issues and do not require re-notification and do not introduce additional concerns that adversely affect the amenity of adjacent land. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent. 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 in the original consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority

Section 4.15 'Matters for Consideration'	Comments
	to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.
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	(i) **Environmental Impact** The environmental impacts of the proposed modified development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) **Social Impact** The proposed modified development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed modified development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the modifications to the development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Public Exhibition" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the modification 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 4 submission/s from:

Name:	Address:
Mrs Geraldine Anne Moorman	12 / 19 - 23 Delmar Parade DEE WHY NSW 2099
Mr David Shepherd	12 / 105 Howard Avenue DEE WHY NSW 2099
Mrs Jennifer Ann Trueman	5 / 105 Howard Avenue DEE WHY NSW 2099
Council Approval Experts C/-	1 / 16 The Strand DEE WHY NSW 2099

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

1. Overshadowing
2. Building height
3. Exhaust ducts
4. View loss
5. Architectural design
6. Noise activity
7. Dilapidation risk
8. Parking and laneway access
9. Notification

The matters raised within the submissions are addressed as follows:

1. Concern is raised that the increase in height will further impact overshadowing effects on No.16 The Strand particularly internal areas around the immediately adjacent apartments and balconies

Comment:
In order to fully address this issue, detailed shadow diagrams at mid winter were provided by the applicant to demonstrate the impact on solar amenity to adjacent residential land. In this regard, reference is made to *Parsonage v Ku-ring-gai [2004] NSW LEC 347* where Roseth SC assessed the reasonableness of solar access guidelines, in particular, "*numerical guidelines should be applied with a great deal of judgement. Consider a dwelling that now received sunlight all day. Taking away that sunlight from 9am till noon would satisfy most guidelines; and yet the occupants of such a dwelling are likely to perceive it as a devastating impact on their dwellings amenity. The other side of the coin is that the impact on a neighbours sunlight must be assessed in the context of the reasonable development expectation of the proposal and the constraints imposed".* The proposal has been submitted with sufficient information to address this issue in detail and determine whether any broader solar amenity can be reasonably sustained, or not, given the density of the surrounding development and reasonable public expectation to at least maintain minimal change to solar access already lost by the approved development (as modified).

Overshadowing for the 21 June is detailed in the diagrams provided by *Antoniades Architiects,* dated 19/9/2017, drawings No.4.50 to 4.52. Concern was raised with the applicant regarding the increase in overshadowing from the expanded solid balustrade and roof top deck structures that may increase shadowing toward No.16 The Strand. This is particularly to the light wells that serve the living areas and provide natural light amenity to the adjacent dwellings.

The applicant has opted to amend the modification plans to rely on the original roof top layout thereby ensuring overshadowing change is minimal and not increased by roof top balustrades / deck structures so they are not inconsistent with the previously approved plans. The building height on the southern elevation remains under the 13m height control but there is a marginal additional overshadowing cast into the light wells as demonstrated on the plans for the 21 June. The principal balcony areas for No.16 The Strand have adequate size and solar access, including large glass doors, to allow ample natural light into the principal living areas. In order to maintain the exact same overshadowing the top floor roof height would have to remain unchanged by a compressed floor ceiling space or / recessed to maintain the same shadow line. However, this would create complications for construction and fitting of services within the subject apartment's ceiling space, which is not recommended.

Therefore, this issue has been able to be addressed by a minor amendment to the roof elements

(deck, balustrade) to minimize any change to overshadowing.

2. Concern that the building height is being increased and the building design moved forward toward The Strand.

Comment:
The existing approved building design is marginally above the building height line at the corner of Howard Avenue and The Strand as well as for ancillary structures on the roof; such as planter boxes, pool coping and balustrades. This is a consequence of each of the floor to ceiling height for the levels above the ground floor being marginally increased, giving a cumulative height increase for the building of 34 centimetres (cm) for the roof-top surface. At the forward edge of the building façade, facing The Strand, the height will increase from RL19.74 to RL20.015 (being 27.5cm) which is 10.5cm above the 13m height plane, as shown on Section B-B.

The setback of the building and wall lines remain consistent with the approved plans under MOD2009/0343. Therefore, no unreasonable additional building bulk or scale is being added to the building when viewed from either No.16 The Strand or No.105 Howard Avenue. Submission details provided in respect of No.16 The Strand are partly based on the existing building, without acknowledgment of the approved development (as modified) under DA2005/1227. Close comparison of the previously approved modification plans and the current plans demonstrates consistency between the height and outer wall lines.

Therefore, the applicant has demonstrated no unreasonable change to building height or setbacks and this issue does not warrant refusal of the proposed modification.

3. Concern that the exhaust fans may not discharge vertically and may discharge toward adjacent land affecting the amenity of neighbours or the street.

Comment:
The potential amenity impacts of the internal reconfiguration and floor to floor level changes with respect to adjacent land was raised with the applicant, following site inspection at No.16 The Strand and No.105 Howard Avenue. The plans show the location of exhaust fans from the restaurant are ducted vertically to the roof in a centralized location. The applicant has also included the improvement to relocate six motorized fan condenser units (previously approved within the light wells) to the roof top area. Therefore, the amenity of adjacent land has been addressed by the internal changes and design considerations for noise and mechanical ventilation.

This issue has been addressed by the applicant and does not warrant refusal of the proposed modification.

4. Concern that the design changes will contribute to a further loss of ocean views from No.105 Howard Avenue.

Comment:
The building has been designed to maintain the same diagonal view line across the north-western corner of the site as approved under MOD2009/0343. The change to the balcony depth to the (western) units 7, 8,11 and 12 within the development will not have any significant impact on the view lines retained (as approved). View loss issues are addressed in further detail under

the heading "Part D7 Views" within this report.

Therefore, this issue is not considered to have determining weight.

5. Concern that the modification application should adhere to the Warringah DCP, SEPP 65 Design Quality Principles and the Apartment Design Guide, including maintaining consistency with original architectural design to maintain visual privacy, solar access and amenity issues.

Comment:
The proposal has been submitted with supporting reasons that the modification is "substantially the same" in terms of the design appearance and residential design quality. Generally, the modifications will serve to improve internal serviceability of the commercial floor space, carparking, and residential amenity. The building includes additional carparking for residential Units and rationalization of the floor layout without any unreasonable amenity impact on the street or adjacent land. As detailed within this report , the modifications are consistent with the objectives and requirements of WLEP 2011, WDCP, State Environmental Planning Policy No. 65 (SEPP 65) and the Apartment Design Guide. The proposal is required to meet the Building Code of Australia (BCA) and the applicant has provided sufficient information to demonstrate that BCA compliance, or deemed-to-comply solutions, can be made to maintain consistency.

Therefore, this issue is not considered to have determining weight.

6*. Concern that the proposal will increase noise activity in the area for residences due to the available commercial space and roof top terrace.*

Comment: The increased floor space is confined to the internal areas of the restaurant (including basement storage) and no new balconies or openings proposed that face directly toward adjacent apartments. The proposal is consistent with the desired future character of the area to encourage "activation" of the streetscape for casual dining, shopping and commercial activity in keeping with the applicable planning controls for a "Local Centre." Environmental Health have provided conditions for noise management of the commercial area and noise generating plant motors. The current modification has amended to the roof top terrace area to remain as previously approved. Therefore this issue has been addressed by the applicant.

Therefore, this issue is not considered to have determining weight.

7*. Concern that the modification includes additional excavation works and increase risk of dilapidation to adjacent from demolition and construction.*

Comment: The proposal seeks to re-instate a second basement level previously deleted by a modification to the original plans. Excavation and dilapidation risk has been addressed in the original consent to ensure appropriate construction methods to prevent any safety risks and dilapidation of adjoining buildings/property. Existing conditions of consent are maintained to ensure this issue is addressed during works, including the preparation of a dilapidation report, geotechnical risk protection, occupational health and safety compliance during construction.

Therefore, this issue is addressed by existing conditions and does warrant refusal of the modification.

8. Concern that there is an existing traffic and parking problem in the vicinity of the existing rear laneway access which will be made worse by the modification to the development.

Comment:
The proposed modification seeks to increase the amount of carparking for residents and will retain parking for staff within the two basement levels. Council has previously accepted a shortfall in parking based on a merit assessment and supported by a *Traffic and Parking report* demonstrating that the surrounding area has adequate public carparking to support the proposal, with no unreasonable impact on local traffic and parking. In addition, the modification seeks to improve the layout of the loading dock, including better access along the rear laneway with improved garbage management, ensuring "back of house" activity for the restaurant / café is contained within the building and secure from public view.

Therefore, this issue does not warrant further consideration and does not have determining weight.

8. Concern that the notification should have been broader in the vicinity of the site.

Comment: The proposal was notified to all adjacent neighbours in accordance with the requirements of the EP&A Act Regulations 2000 and the Warringah DCP 2011. This included advertising and a sign placed on site. Notification and advertising was consistent that previously done for past modifications of the approved development.

Therefore, this issue does not warrant further consideration and does not have determining weight.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	No objections and existing conditions are satisfactory to ensure compliance with the *Building Code of Australia*.
Environmental Health (Acid Sulphate)	No objection to approval of the modification with the basement (Level B2) depth re-introduced. Recommended to add condition No.66A for Acid Sulfate Soil.
Environmental Health (Industrial)	No objection to approval and no change to existing conditions required.
Environmental Health (Food	No objection to approval subject to additional conditions to update

Internal Referral Body	Comments
Premises, Skin Pen.)	compliance with current regulations for food premises and environmental health requirements.
NECC (Coast and Catchments)	The proposal is not impacted by natural coastal processes and will not adversely impact the natural coastal environment. The proposed modification is supported without modification to the existing conditions of consent.
NECC (Development Engineering)	The proposed modification does not impact the original assessment of the application by Development Engineering with no impact to the approved OSD system or assess to the site. No objection to approval with no additional or modified conditions of consent recommended.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The property is not adversely affected by low level flooding (only by the PMF). No conditions or changes required for flood controls.
Strategic and Place Planning (Urban Design)	It is recommended the roof top deck be maintained at the previously approved area to minimize amenity issues to the adjacent residences and the balcony extension (facing Howard Avenue) be reduced to 1.4m to avoid further encroachment to view lines from No.105 Howard Avenue. This can be addressed by conditions if no revised plan is received. <u>Planning Comment:</u> Revised plans were provided by the applicant demonstrating the existing view line is retained (as approved) from No.105 Howard Avenue and the roof top terrace will remain as previously approved. The plans included in Condition No.1A address this issue.
Waste Officer	No objection to approval subject to documentation requirements being provided for waste management (demolition material, construction waste).

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to *Ausgrid*. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Nominated Integrated Development – WaterNSW (Permit for Temporary Construction Dewatering)	An integrated assessment referral was sent to *WaterNSW* (Department of Primary Industries) on 17 May 2018. A follow-up email was sent to *WaterNSW* on 3 October 2018, however no response has since been received. Therefore, no change is recommended to the original *General Terms of Approval,* issued for DA2005/1227, dated 7 February 2007.

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

The requirements of the SEPP were considered in detail under the original assessment of the development application and the modification work does not raise any new issues for considerations pursuant to the SEPP.

SEPP 65 - Design Quality of Residential Apartment Development

If a development application or an application for the modification of a development consent has been made after the notification on the NSW legislation website (19/6/15) of the making of State Environmental Planning Policy No 65—Design Quality of Residential Flat Development (Amendment No 3) and the application has not been finally determined before the commencement of that amendment (17/7/15), the application must be determined under this Policy as amended by that amendment.

The *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* applies with the *Apartment Design Guide.*

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

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

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

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

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
(c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the modification of a five (5) storey shop top housing development with basement car parking, for the construction of twelve (12) self-contained apartments and two (2) shops.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are

applicable to the assessment of this application.

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

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

Warringah Council does not have an appointed Design Review Panel.

DESIGN QUALITY PRINCIPLES - Schedule 1

Principle 1: Context and Neighbourhood Character

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

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

Comment:
The Strand is a local centre that is undergoing change for shop top housing whereby a strong emphasis exists on an active street front dominated by restaurants and outdoor dining. The future character of The Strand seeks to encourage development that includes mixed use buildings that provide a day time and evening focal point for neighbourhood living and strong connection with the beach front location. In this regard, the local planning controls specify a 13m height limit with a maximum of 3 storeys. The modified proposal retains the approved 4 storey composure and does not adversely detract from the qualities of the streetscape and continuity of the precinct. The proposal will maintain the roof top elements in a consistent configuration to the approved development (as modified). The additional height has a minor increase in overshadowing of adjacent land but does not create an unreasonable detrimental impact on the internal amenity of No.16A & 16B The Strand.

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the

character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment:
The proposal is consistent with the desired future character of The Strand including elements of the modification work that are visible from adjacent apartments. The proposal is remains marginally above maximum height limit (as approved) due to roof top elements that exceed the 13m height plane, including sections of the parapet. The applicant provided revised plans to return the roof top terrace to that consistent with the previously approved plans. The modification plans also demonstrate that the diagonal view line across the north western corner of the site will be retained and the minor change to the western balcony does not affect this due to the wider apartments on the eastern side of the building. In summary, the proposal is consistent with the approved height and is consistent with the objectives of minimizing view impacts, building bulk, and maintaining residential amenity to adjacent residential apartments. The modification also seeks to improve internal service placements and structural elements.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment:
The proposal was assessed with respect to residential amenity for each apartment and approved, with amendments to ensure appropriate density, solar access, cross ventilation and facilities. The proposed additional basement level improves the availability of carparking to service the development. An increase in the residential density of the building has been achieved by reconfiguring the approved larger units on the upper floor without any significant increase in building bulk for the overall development.

Principle 4: Sustainability

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

Comment:
The proposal has previously been assessed on sustainability principles and approved having been assessed under SEPP 65 (and the previous Residential Flat Design Code (RFDC) - "Rules of Thumb") to have adequate design for cross ventilation, solar amenity and livability for future occupants. The modification is satisfactory in design to ensure adequate ventilation and sunlight.

Principle 5: Landscape

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

Good landscape design enhances the development's environmental performance by retaining positive

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

Comment:
The site has no requirement for ground level landscaping and the building/carpark and concrete apron areas will cover the entire site. No new or additional landscaping areas are proposed with the modification. However, in selected locations landscape planter boxes are used to give privacy separation and screening for the balcony / terrace spaces.

Principle 6: Amenity

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

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

Comment:
The proposal made a number of changes for each floor of the building, including the roof top in order to rationalize the building layout and improve internal amenity. Changes will maintain the principal visual outlook, outdoor open space amenity and provide efficient layout for units and access. No further assessment of this design principle is required for the modification. A number of conditions are no longer required as design changes have been included to accommodate the requirements of those conditions or the conditions are redundant due to the detail being integrated on the amended plans. These include conditions No.35, 36a, 36b and 36c.

Principle 7: Safety

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

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

Comment:
The building will maintain appropriate floor layout for the commercial and residential units with suitable pedestrian access and security, including carparking for visitors, residents and staff. No further assessment of this design principle is required for the modification. The wider availability of public parking near the Dee Why Beach front provides for customer parking that services public visitation to the beach and The Strand.

Principle 8: Housing Diversity and Social Interaction

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

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including

different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment: The configuration of the building will retain similar commercial areas (café / restaurant space). The additional cafe space and additional residential unit space has been appropriately integrated into the design without unreasonable impacts on parking, amenity or the streetscape enabling additional housing and space for more diverse commercial activity. No further assessment of this design principle is required for the modification.

Principle 9: Aesthetics

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

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

Comment:
The external appearance of the building maintains consistency in its appearance (as approved) in terms of bulk, window fenestration, balcony spaces, articulation and colours and high quality external materials. The building will remain marginaly above the height limit of 13m and maintains the fourth storey element with a roof top pool and larger deck area. The additional height does not translate to non-compliances with the build-to lines (front boundary setback) that were to be maintained for The Strand. The non-compliance with building height will not be apparent from the public domain.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Yes. Satisfactory urban design and architectural treatment in relation to surrounding development.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	The modification may marginally reduce internal natural light due to redesigned floor layout. However, this will be a minor seasonal change and is restricted to the internal space central to the building. Adequate solar access is gained from principal frontages to the street.

<table>
<tr><td>Public Domain Interface</td><td>Does the development transition well between the private and public domain without compromising safety and security?

Is the amenity of the public domain retained and enhanced?</td><td>No significant change is proposed to public entry areas and security of the building design. The amenity of the public domain areas within the building will be maintained by the modification.</td></tr>
<tr><td>Communal and Public Open Space</td><td>Appropriate communal open space is to be provided as follows:

1. Communal open space has a minimum area equal to 25% of the site
2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)</td><td>The site is within a commercial area for mixed use shop top housing. No communal space is required and the site is opposite a beach-front recreation reserve with open space facilities.</td></tr>
<tr><td>Deep Soil Zones</td><td>Deep soil zones are to meet the following minimum requirements:

<table><tr><th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr><tr><td>Less than 650m^2</td><td>-</td><td rowspan="4">7%</td></tr><tr><td>650m^2 – 1,500m^2</td><td>3m</td></tr><tr><td>Greater than 1,500m^2</td><td>6m</td></tr><tr><td>Greater than 1,500m^2 with significant existing tree cover</td><td>6m</td></tr></table></td><td>No landscaped open space is required for deep soil planting. No ground level landscaping was approved for the building.</td></tr>
<tr><td>Visual Privacy</td><td>Minimum required separation distances from buildings to the side and rear boundaries are as follows:

<table><tr><th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table></td><td>No change is proposed to the building separation. The additional height although marginal is not inconsistent with approved plans.

The change to the building also includes increased density and additional basement level.

The design response is satisfactory to maintain visual privacy with appropriate screening elements as shown</td></tr>
</table>

	Note: *Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.* *Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.*	on the modification plans.
Pedestrian Access and entries	Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify? Large sites are to provide pedestrian links for access to streets and connection to destinations.	No significant change is proposed to building access or entries. Existing (approved) pedestrian access to the street is satisfactory.
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	Access is maintained by the rear access lane (private ROW).
Bicycle and Car Parking	For development in the following locations: • On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or • On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street. Parking and facilities are provided for other modes of transport. Visual and environmental impacts are minimised.	Satisfactory. Residential and staff carparking is off-street and within the two basement levels. A loading dock is also provided for the service areas needed for the building (e.g waste bins), including the shops at ground floor level. The site has convenient access to existing public parking nearby at Dee Why Reserve.
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: • Living rooms and private open spaces of at least 70% of apartments in a building are to	The site is has an east-west orientation with Howard Avenue also affording wide northerly aspect. Balconies for each apartment

<table>
<tr><td></td><td>receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.
• A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</td><td>will receive adequate direct sunlight.</td></tr>
<tr><td>Natural Ventilation</td><td>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:

• At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.
• Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</td><td>The proposal is satisfactory to maintain natural ventilation to all apartments.</td></tr>
<tr><td>Ceiling Heights</td><td>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:

<table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor

2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>2.7m for main living area floor

2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>If located in mixed use areas</td><td>2.7m for main living area floor

2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr></table></td><td>The proposed modifications maintain compliance with floor to ceiling height requirements.</td></tr>
<tr><td>Apartment Size and Layout</td><td>Apartments are required to have the following minimum internal areas:

<table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m^2</td></tr></table></td><td>The proposed modifications maintain satisfactory layout and area for the number of bedrooms per unit and are</td></tr>
</table>

<table>
<tr><td></td><td>
<table>
<tr><td>1 bedroom</td><td>50m^2</td></tr>
<tr><td>2 bedroom</td><td>70m^2</td></tr>
<tr><td>3 bedroom</td><td>90m^2</td></tr>
</table>

The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m2 each.

A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m2 each.

Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.
Habitable room depths are limited to a maximum of 2.5 x the ceiling height.
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.
Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).
Bedrooms have a minimum dimension of 3m (excluding wardrobe space).
Living rooms or combined living/dining rooms have a minimum width of:

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

The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts
</td><td>consistent with this requirement.</td></tr>
<tr><td>Private Open Space and Balconies</td><td>
All apartments are required to have primary balconies as follows:
<table>
<tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr>
<tr><td>Studio apartments</td><td>4m^2</td><td>-</td></tr>
<tr><td>1 bedroom apartments</td><td>8m^2</td><td>2m</td></tr>
<tr><td>2 bedroom apartments</td><td>10m^2</td><td>2m</td></tr>
<tr><td>3+ bedroom apartments</td><td>12m^2</td><td>2.4m</td></tr>
</table>
For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m^2 and a minimum depth of 3m.
</td><td>Compliant.</td></tr>
<tr><td>Common</td><td>The maximum number of apartments off a</td><td>Compliant</td></tr>
</table>

Circulation and Spaces	circulation core on a single level is eight. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: **Dwelling Type** / **Storage size volume** Studio apartments: $4m^2$ 1 bedroom apartments: $6m^2$ 2 bedroom apartments: $8m^2$ 3+ bedroom apartments: $10m^2$ At least 50% of the required storage is to be located within the apartment.	Compliant.
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Satisfactory for design requirements.
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Satisfactory for design requirements.
Configuration		
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Satisfactory for design requirements.
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Only minor changes are proposed to the external materials or colours are consistent with the previously approved external materials and colours. The proposal demonstrates high quality external materials have been selected.
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Test whether the roof space can be maximised for residential accomodation and open space.	The roof will remain as a flat roof design but marginally higher than previously approved. The roof now incorporates solar panels as a sustainability feature. The roof deck area with the

<table>
<tr><td></td><td></td><td>pool has been retained (as per revised roof level plan) to remain consistent with the previously approved design to maintain amenity to adjacent land.</td></tr>
<tr><td>Landscape Design</td><td>Was a landscape plan submitted and does it respond well to the exisitng site conditions and context.</td><td>No landscape plan is required.</td></tr>
<tr><td>Planting on Structures</td><td>When planting on structures the following are recommended as minimum standards for a range of plant sizes:
<table>
<tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr>
<tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m^3</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr>
<tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m^3</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr>
<tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m^3</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr>
<tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr>
<tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr>
<tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr>
</table></td><td>A minor reconfiguration of roof structures is provided due to additional services and BCA compliance.</td></tr>
<tr><td>Universal Design</td><td>Developments are to achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.</td><td>No details have been provided as to whether the proposal satisfies this benchmark however additional residential units are proposed.

This issue does not warrant refusal of the modification.</td></tr>
<tr><td>Adaptive Reuse</td><td>New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.</td><td>Not applicable. The existing building will be fully demolished.</td></tr>
<tr><td></td><td></td><td></td></tr>
</table>

Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	The site is accessible by public transport (bus) and the non-residential uses are located at street level. The ground floor contains restaurant and café spaces, loading dock and basement access with "back-of-house" facilities and rear lane access.
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	No change.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	The modification plans have been submitted with a BASIX certificate.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	The stormwater management system is integrated to the building. *General Terms of Approval* remain in place as per the original development consent.
Waste Management	Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.	Waste management areas have be redesigned to improved sorting, hygiene and service collection.
Building Maintenance	Incorporates a design and material selection that ensures the longevity and sustainability of the building.	Satisfactory as per the material schedule shown on the plans. Existing conditions are satisfactory to address this issue and ensure compliance with the BCA.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

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

> *(a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,*

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

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

Comment:
(a) *Carparking*: -The proposal seeks to increase the amount of carparking by adding a lower basement level. In addition to this a reconfiguration of the units will create one additional dwelling and extra floor space for the commercial areas. The proposal does not comply with car
(b) *Internal Areas:* - The internal areas for each floor have been re-configured to improve access arrangements and internal layout. This includes merging larger unit to create the additional 2 (smaller) units.
(c) *Ceiling Heights*: - The modification proposes to comply with the recommended minimum ceiling heights of the Apartment Design Guide. Sufficient detail has been provided to address the SEPP which notes the minimum ceiling height specified in the *Building Code of Australia* for residential flat buildings. In this regard, the additional height to the building is minor for the modification of consent and addresses existing conditions that specify compliance with the BCA and the Apartment Design Guide. Design details for the use of bulk heads, common service ducts and exposed ceilings have been sufficiently detailed to demonstrate change to the building height is being minimised.

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

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

(3) To remove doubt:

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

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

Comment: Consent for the modification supported in this case since adequate regard has been given to the design qualities principles of; Context and Neighbourhood Character, Built Form and Scale, Sustainability, and Aesthetics. In addition, the proposal seeks consistency with the Apartment Design Guide for Building Height without details to address the allowances made under section 4C Ceiling Heights within the *Apartment Design Guide*.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.903492M).

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

Commitment	Required Target	Proposed
Water	40	49
Thermal Comfort	Pass	Pass
Energy	40	57

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

SEPP (Infrastructure) 2007

The proposal has been considered against the aims and objectives of the SEPP and the modification work is consistent with the SEPP.

SEPP (Coastal Management) 2018

The proposal involves modification to an approved building structure with no significant change to the external colours and finishes or impact on the coastal environment. The modification work has been considered within the context of the SEPP (Coastal Management) 2018 and is consistent with the aims of the SEPP.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	13.0m	11.7m to 13m (roof) 13.4m rooftop pool structure	11.7 to 13m 13.4m rooftop pool structure	No change No change	Yes No

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Land Use Table	Yes
Part 4 Principal development standards	No
4.3 Height of buildings	Yes

Clause	Compliance with Requirements
4.6 Exceptions to development standards	No
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
Part 6 Additional Local Provisions	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

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

Requirement:	13.0m
Proposed:	13.405m (including lift overrun, lift plant, vents and the like)
Is the planning control in question a development standard?	YES
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	3.1%

building height (or height of building) means:
(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The proposal is a modification of consent and therefore numerical compliance with the development standard does not strictly apply. Therefore, consideration against the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the WLEP 2011 is made only in-so-far as to ensure consistency with the environmental impacts of the original development approval (as modified). The assessment is detailed as follows:

Is the planning control in question a development standard?

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

What are the underlying objectives of the development standard?

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

2011 are:

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

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

Comment:

The modification work proposes some ancillary change to the roof top area and height of building. While there is no significant change to the overall building bulk, elements of the building are subject minor variations in height, scale and appearance from the approved building design. The existing approved plans also do not maintain absolute compliance with the current planning instrument as there are minor elements above roof level that breach the 13m LEP height plane, as approved. The proposed modification includes a further minor increase in selected floor to ceiling levels that adds to the overall building height. Consideration of the amended building height is made in the context of whether these ancillary elements create any undesirable precedent for the LEP height control and the overall compatibility of the building with adjacent development. The changes to the building design will remain consistent with this objective.

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

Comment:

The reconfigured building elements at the upper level of the building are part of the fourth storey element and involve a re-arrangement of the existing roof-top area and fourth storey. Other changes are confined to the forward streetscape elevations, ground level and basement. Internal changes to the residential floor layout for the modification proposal do not create any unreasonable visual impact. However, it is apparent that there will be a marginal increase in overshadowing to the light well areas along the southern elevation. Given these light wells are associated with principal living areas and serve to provide natural light and amenity to No.16 The Strand any further reduction in solar access should be minimised. Adequate details are provided to establish the mid-winter impact created by the modification, in comparison to the exiting approved work. The proposal demonstrated the changes in solar access for June 21, for the increased building height will not have an unreasonable impact solar access to No.16 The Strand due to the balance of solar access being maintained to principal open space balconies.

The modification work has also had regard to maintaining coastal view lines in the context of adjacent land, particularly No.105 Howard Avenue.
Sufficient information has been provided to demonstrate the proposal will not create any unreasonable cumulative impact on views, solar access and privacy.

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

Comment:

The subject site is within the urban precinct and the proposed changes do not create any significant change to the approved scenic impact of the building when viewed from the coastal beachfront areas near the site. In summary, the proposed modification will be consistent with this objective.

d) *to manage the visual impact of development when viewed from public places such as parks*

and reserves, roads and community facilities,

Comment:

The subject site is opposite the Dee Why beachfront reserve which is a popular public open space and well used area all year round. The coastal location of the reserve includes the urban backdrop provided by The Strand. The building partly below the height limit on southern side of the site due to the existing site levels but will remain marginally above the 13m height limit at the corner of Howard Avenue and the Strand. Ancillary elements on the roof top (pool coping, planter box, condenser screens and the like) will also be marginally above the height limit.
However, these ancillary roof top elements are not readily visible from street level due to their centralized position on the building. Overall the desired character and continuity of shop-top housing development in this location is maintained and consistent with this objective.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the B2 Local Centre zone.

The underlying objectives of the B2 Local Centre zone

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

  Comment:

  The modification will maintain shop top housing in the local area and provide housing, business/retail space to support this objective.

- *To encourage employment opportunities in accessible locations.*

  Comment:

  The Strand is accessible for employment and the building will maintain adequate parking and pedestrian access for the shop top housing. The proposal is satisfactory with regard to this objective.

- *To maximise public transport patronage and encourage walking and cycling.*

  Comment:

  The proposal will not have an adverse impact on opportunities to use public transport or pedestrian and cycling activity. The ground floor levels will remain consistent with street level for ease of access for pedestrians and cyclists (including disabled persons).

- *To provide an environment for pedestrians that is safe, comfortable and interesting.*

  Comment:

  The configuration of the ground floor layout will be modified to improve "back-of-house" areas. In addition, a new basement level (re-introduced) is proposed to increase on-site parking. The existing access arrangement for pedestrians will be retained to ensure an environment that is safe, comfortable and interesting with an active street level.

- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

  Comment:

  The proposal has not made any significant change to the external appearance of the building when viewed from the public domain. The proposal does not have any ground level requirement for landscaping and the external materials and colours remain consistent with the approved plans (as modified). Therefore, the proposal remains consistent with this objective.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

  Comment:

  The increased height (as notified) is consistent with newer residential development in the zone and maintains reasonable amenity to adjoining land. The applicant has reduced the roof top terrace area back to the previously approved area and relocated the condenser motors to the roof in order to address initial amenity concerns with the modification. This will improve or maintain the acoustic amenity around the light wells, including the elimination of hot air discharge from six condenser motors. The change to overshadowing within the light well shaft is also lessened due to the roof deck balustrades being retained at their previously approved position setback from the southern edge. The cumulative impact of the floor to ceiling height increase for L1 to L3 has a marginal increase to the overall building height however the roof surface remains compliant with the 13m height control and no unreasonable amenity loss to adjacent land.

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

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

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

Comment:

The applicant sought approval for a shop top housing development and placed supporting arguments to Council to give flexible consideration to a number of elements of the design. The modification remains consistent with the previously approved plans in terms of environmental impact and the visible scale, colours and materials. While there are numerous internal changes (including additional commercial floor space and carparking) no objection is raised to the height non-compliance in terms of allowing flexibility to the numerical standard whereby the roof surface is still compliant with the 13m height control.

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

Comment:

It is considered that the proposed modification will achieve acceptable outcomes from the development in relation to the 13m height line despite marginal changes to overshadowing. Therefore, the proposal will not create unreasonable additional impact on adjacent land.

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

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

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

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

Comment:
The proposal is already approved (as modified) with a minor non-complying elements to the building height of 13m (including the 3 storey limit, approved with 4 storeys). Under the circumstances of the case no unreasonable loss of development potential is imposed on adjacent land. The applicant has provided sufficient information to justify the minor change to the building height with the current modification and demonstrate the extent of the non-compliance sought is reasonable and has been minimised.

Sufficient environmental planning grounds have been provided to address contravening the development standard, to the extent proposed.

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

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
Comment:
A modification of consent is not required to provide a written request for variation to the development standard since it is not a "development application". Therefore, the variation is assessed against the environmental impact of the approved development to ensure consistency in minimizing any adverse impacts and consistency with the objectives of the zone but not the numerical standard itself.

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

Comment:
For reasons detailed above, the proposal is considered to be consistent with the objectives of the *B2 Local Centre zone* in the WLEP 2011 and matters of the public interest as detailed in this report are addressed under the heading "Submissions".

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

Comment:
Planning Circular PS 08-003 dated 9 May 2008, as issued by the *NSW Department of Planning*, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. The variation is less than 10% of the numerical standard and the modification satisfies this concurrence requirement.

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B2 Number of storeys	3 storeys	4 storeys	4 storeys (No change)	No* (as approved)
Minimum Floor to Ceiling height (as per *F1 Local and Neighbourhood Centres*)	3.6m for ground floor 2.7m for upper storeys	3.0m - 3.6m 2.7m	3.0m - 3.2m (Floor to floor 3.6m) 2.7m - 2.8m (Floor to floor 3.015m)	No* Yes
B5 Side Boundary Setbacks	Merit Assessment	0.0m	0.0m (No change)	Yes
(as per *F1 Local and Neighbourhood Centres*)	Merit Assessment	0.0m	0.0m (No change)	Yes
B7 Front Boundary Setbacks **Howard Avenue, Dee Why** (as per DCP *F1 Local and Neighbourhood Centres*) *Above the second storey, buildings will step back from Howard Avenue*	Ground and first floor to maintain established street front. Second floor up to 4m	**Basement** 0.0m **Ground Floor** Aligned to boundary **First Floor** 0.0m to 6.3m from kerb* **Second Floor** 0.0m to 11.3m from kerb* **Third Floor** 0.0m to 7.3 from kerb* Pool & deck on roof	**Basement L2** (added) 0.0m **Basement L1** 0.0m **Ground Floor** 0.0m as approved to maintain street front **First Floor** 0.0m to 2.5m with balcony to 0.0m **Second Floor** 0.0m to 7.6m with balcony to 0.0m **Third Floor** 0.0m to 7.6m with balcony to 0.0m Pool & deck on roof.	Yes Yes (As approved)

B7 Front Boundary Setbacks **The Strand, Dee Why** (as per DCP *F1 Local and Neighbourhood Centres*) *Above the second storey, buildings will step back from The Strand.*	Ground and first floor to maintain established street front. Second floor up to 4m	**Basement** 0.0m **Ground Floor** 0.0m as approved to maintain street front **First Floor** 6.5m from kerb* **Second Floor** 6.5m from kerb* **Third Floor** 6.5m to 7.3m from kerb*	**Basement L2** (added) 0.0m **Basement L1** 0.0m **Ground Floor** 0.0m as approved to maintain street front **First Floor** 2.5m to 2.7m with balcony to 0.0m **Second Floor** 2.5m to 2.7m with balcony to 0.0m **Third Floor** 2.5m to 3.3m with balcony to 0.0m	Yes Yes (As approved)

Note: *Refer to detailed merit assessement under Part *F1 Local and Neighbourhood Centres* as well as SEPP No.65 and the *Apartment Design Guid*e include additional controls to the DCP built form controls as detailed in this report.
* The front setback measure under the original DA and modification was assessed to the kerb under WLEP 2000. Under the current DCP 2011, the front setback is to be measured to the boundary. Although the modification application proposes numerous changes to the built form as approved under Development Consent No.DA2005/1227 (including previous modification), the extent and scope of the proposed modifications do not create any significant inconsistency with the numerical and merit compliance with the current development standards. Refer to merit assessment of issues within this report.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	Yes	Yes
Part B Built Form Controls	Yes	Yes
B2 Number of Storeys	No	Yes
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
Part C Siting Factors	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C3(A) Bicycle Parking and End of Trip Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Part D Design	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	No	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
Part E The Natural Environment	Yes	Yes
E10 Landslip Risk	Yes	Yes
F1 Local and Neighbourhood Centres	Yes	Yes

Detailed Assessment

C3 Parking Facilities

Description of non-compliance

The modified proposal will have a numerical shortfall of 53.5 on-site carparking spaces pursuant to the Warringah DCP 2011 (Appendix 1).

Merit consideration

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

- *To provide adequate off street carparking.*

  Comment:

  The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Approved	Proposed

Shop Top Housing	**Restaurant / Cafe** 15 spaces per 100 sqm of GFA*	456 sqm GFA 4.56 x 15 = **68.4** (including loading dock and DDA carspace)	**9** car spaces plus a loading dock	**9** (including one DDA carparking space plus a loading dock
	Residential 1 per 1 Brm 1.2 per 2 Brm 1.5 per 3 Brm plus 1 per 5 Units	3 spaces 9.6 spaces 4.5 spaces + 3 visitor spaces (including 1 DDA car space)	**15** (including one DDA carparking space)	**24** (including one visitor space and one DDA carparking space)
Total		**88.5** spaces	**24 spaces** (- 64.5)	**35 spaces** (- 53.5)

*The above rate may be reduced if there is, in the consent authority's opinion, suitable available parking in the vicinity during the operating hours of the proposed development.

Council originally approved a shortfall carparking spaces on the basis of the applicants *Traffic and Parking report* demonstrating the availability of public carparking near the site (particularly Dee Why beachside reserve area). This included assessment of after hours parking and acknowledging the existing restaurant floorspace. The approval of MOD2009/0343 permitted the deletion of basement level 2 resulting in a reduction to 24 carparking spaces (as per the table above).

The proposed modification now seeks to re-instate the second basement level again to increase carparking available to the building as detailed in the above table. As such the original allocation of parking as per Condition No.95 is no longer required as this detail is now shown on the submitted plans.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

  Comment:

  The carparking area is accessed from the rear laneway (as approved) and therefore has minimal change to the visual impact on the street frontage. The modification is consistent with this objective.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

  Comment:

The garage entry does not directly face the street and loading areas, including "back of house" facilities will be integrated into the building to improve the visual appearance of the laneway from Howard Avenue. Therefore, the modification is consistent with this objective.

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

D7 Views

Merit consideration

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

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

  Comment:

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

  1. Nature of the views affected

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

  Comment to Principle 1:

  105 Howard Avenue – Units affected are located toward the northern end of the residential flat building to the west of the subject site. Views from these units are in have an easterly and north-easterly view corridor over the subject site to the ocean, including partial views of Dee Why Beach (sand, parkland and Norfolk Island Pines) and partial views northeast along Dee Why Beach. The views are a mixture of general beachside / parkland views and landmark views. The land on the northern side of Howard Avenue is developed in a similar pattern to the southern side of Howard Avenue.

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

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

Comment to Principle 2:

The views from 105 Howard Avenue (including, upper floor and front Units) are obtained over the side boundary of the property and are generally from living areas and balconies of those units. Views are also obtained over the northern boundary from the front of No.105 Howard Avenue. Views are available from seated and standing positions within the living rooms and balconies to varying degrees. In this respect, ocean/headland views over the side boundary are difficult to protect. Views from No.16 The Strand are toward the east and north east. It should be noted that the existing approved development of the subject site will object views across the northern boundary line where the common walls between units are already approved.

3. Extent of impact

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

Comment to Principle 3:

The proposed development will involve impacts on ocean/beach views, tree views and ocean views currently obtained over the subject site (and over the side boundary of 105 Howard Avenue) to varying degrees. However, views will still be available to the east toward the ocean and the beach side reserve including northward toward Dee Why Lagoon and the ridge and distant hillside north of the lagoon. The view losses over the subject site as a result of the current modification are *negligible*.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposed development has a marginal non-compliance with the building height controls for the E18 locality in terms of overall building height. As discussed within this report, the variation to the building height control is considered reasonable and acceptable having regard to the fact that the development complies with the 13 metre for the main roof surface and no significant change to views is caused by any non-compliance with the roof elements that breach the 13 height limit.

Therefore, on balance, the modification is considered reasonable with respect to view impacts

and view sharing.

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

  Comment:

  The extent of view loss associated with the current proposal will maintain the setback in compliance with the diagonal view line (shown on the floor plans) without any significant further impact. The minor change to floor levels will not have any unreasonable impact on views.

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

  Comment:

  There are no trees within subject land that will obstruct or form part of the view line.

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

F1 Local and Neighbourhood Centres

Merit consideration:- Desired Character for "The Strand"

- *"Ground floor premises along The Strand, Dee Why will be characterised by restaurants, cafes, shops and leisure-related uses that create active building fronts and contribute to the life of the streets. Housing will characterise upper floors.*

- *Despite Requirement 2 [minimum floor to ceiling height for buildings is to be 3.0 metres for ground floor levels and 2.7 metres for upper storeys], the minimum floor to ceiling height for buildings on land zoned B2 Local Centre at The Strand, Dee Why, is to be 3.6 metres for ground floor levels and 2.7 metres for upper storeys.*

- *The interrelationship between the beach and park and development along The Strand is an important aspect of the character of the area. The design of buildings and shopfronts will have a strong complementary relationship to their beach and parkland setting and help create comfortable, interesting and safe pedestrian environments. Outdoor eating areas in particular will be encouraged.*

- *Above the second storey, buildings will step back from The Strand, Oaks and Howard Avenues and Dee Why Parade and building height will be restricted to maintain solar access to the parklands and ensure the scale of buildings does not dominate public spaces or views from the park or beach.*

- *The corners of Howard Avenue and The Strand, however, are to be strongly defined by virtue of building height and design. Vehicular access for the purposes of servicing at the rear of*

commercial premises along The Strand needs to be retained.

- *Ground floor premises along The Strand, Dee Why will be characterised by restaurants, cafes, shops and leisure-related uses that create active building fronts and contribute to the life of the streets. Housing will characterise upper floors."*

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

- *To encourage good design and innovative architecture.*

Comment:

The proposal was approved with a ground floor level that complied with "Requirement 2 [*minimum floor to ceiling height for buildings is to be 3.0 metres*] " but does not achieve the preferred 3.6m height. The proposed height is satisfactory due to the broad glass shop front and split level required for the ground floor area. The site has a moderate slope which enables the building design to achieve 13m and 4 storeys while maintaining compliant floor to ceiling height for the residential levels. In this regard, the residential floor to ceiling levels satisfy the BCA for light and ventilation and SEPP requirements. In considering the current modification sufficient information has been provided to demonstrate suitable design solutions and internal amenity that does not create any unreasonable impacts on adjacent land and maintains the desired character of The Strand.

- *To provide a safe and comfortable environment for pedestrians*

Comment:

The approved floor configuration and access for pedestrians and vehicles will be improved design for the loading dock / "back-of-house" area and by the provision of extra basement parking. A suitable environment for pedestrians and vehicle access is maintained.

- *To provide a range of small-scale shops and business uses at street level with offices or low-rise shop-top housing to create places with a village-like atmosphere.*

Comment:

The modification will retain the ground floor area for business uses to compliment an active street front that is dominated by cafe's and restaurants. However, the additional height sought will be consistent with maintaining low-rise housing 13m or less. Therefore, the proposed modification will not have an adverse precedent of breaching the height control creating or unreasonable additional overshadowing and amenity impacts to adjacent land to the benefit of the subject site.

- *To enhance the established scale and pattern of development and the continuity of existing streetscapes.*

Comment:
Element of the proposed changes to the building will not detract from the desired character of The Strand, including streetscape elements for a corner site adjacent the beachfront. The modification works are consistent with limiting the impact from the upper storeys, including

visual interest and views across the site. In this regard, the modification is consistent with this objective.

- *To enhance the public domain.*

  Comment:

  The modification does not detract from the public domain of the beachfront given the similarity in the previous streetscape presentation of the building and the current modification.

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

POLICY CONTROLS

Northern Beaches Council Contributions Plan 2018

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

The proposal has been considered against the relevant matters for consideration under Section 4.55 and Section 4.15 of the EP&A Act 1979. This assessment has taken into consideration the submitted

plans, Statement of Environmental Effects, the previous development application and consent and 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 any conditions contained within the Recommendation. A number of additional conditions have been included by Council's Environmental Health Services and Waste Services due to changes in the commercial floor space.

The modifications to the internal configuration of units, the numbers of units and the architecture maintains consistency with the Desired Future Character Statement, maintains the levels of compliance with the Built Form Controls and consistency with the relevant General Principles as assessed under the original Consent No.DA2005/1227 (as modified), maintains and improves the urban design quality of the built form and will not result in any unreasonable or adverse impacts on the subject site, adjoining properties, the streetscape or on the locality generally.

The re-introduction of the second basement level of carparking does not result in any unreasonable impacts and maintains the provision of carparking which is adequate for the development for the reasons as outlined in this report.

There are no adverse impacts or issues arising from the assessment of the modified elements and it is considered that the proposed modification satisfies all other relevant controls, and that all processes and assessments have been satisfactorily addressed.

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. Mod2018/0193 for Modification of Development Consent DA2005/1227 granted for shop top housing, restaurant, cafe, retail shop and basement parking on land at Lot 10 DP 6953,18 - 19 The Strand, DEE WHY, subject to the conditions printed below:

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

"1A. Modification of Consent - 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) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
S96 1.01 H Site / Roof Level Plan	21.11.2018	Antoniades Architects
S96 1.02 L Basement Plan	21.12.2017	Antoniades Architects
S96 1.021 H Basement 02 Plan	19.1.2018	Antoniades Architects
S96 1.03 N Ground Level Plan	31.8.2018	Antoniades Architects
S96 1.04 J First Level Plan	19.1.2018	Antoniades Architects
S96 1.05 J Second Level Plan	19.1.2018	Antoniades Architects
S96 1.06 K Third Level Plan	19.1.2018	Antoniades Architects
S96 2.01 E Section AA	19.1.2018	Antoniades Architects
S96 2.02 J Section B-B	19.1.2018	Antoniades Architects
S96 2.03 J Section C-C	19.1.2018	Antoniades Architects
S96 2.04 H Section D-D	19.1.2018	Antoniades Architects
S96 3.01 E Howard Street North Elevation	19.1.2018	Antoniades Architects
S96 3.02 D The Strand East and Right Way West Elevations	19.1.2018	Antoniades Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX 903492M	23.2.2018	Efficient Living Pty Ltd
BCA Indicative Compliance Report	24.1.2018	Building Certifiers Australia Pty Ltd
Access Report	9.2.2018	Accessibility Solutions Pty Ltd

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

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

Waste Management Plan		
Drawing No.	**Dated**	**Prepared By**
Waste Management Plan	15.2.2012	Elephants Foot Recycling Solutions

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

B. Add Condition No.5A Waste Management Requirements, to read as follows:

"5A. Waste Management Requirements

Details demonstrating compliance with *Northern Beaches Council Waste Management Guidelines*, including the required *Northern Beaches Council Waste Management Plan,* are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with *Northern Beaches Council Waste Management Guidelines*, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided."

C. Add Condition No.66A Acid Soils, to read as follows:

"66A. Acid Sufate Soil Management

Any new information which comes to light during remediation, excavation or construction works which has the potential to alter previous conclusions about the uncovering of Acid Sulfate Soils must be notified to the Certifier as soon as reasonably practicable. This will also require an Acid Sulfate Soil Management Plan, including disposal of affected soil to an approved facility, to be submitted to the certifier, before work continues.

Reason: To ensure potential Acid Sulfate Soil is appropriately managed."

D. Add Condition No.66B Noise Management Plan, to read as follows:

"66B. Noise Management Plan

A *Noise Management Plan* is to be prepared for the Cafe and Restaurant uses to prevent unreasonable amenity impact from operational issues dealing with (but not limited too):
a) Hours of operation
b) Post service clean up and waste put out
c) Noisy patrons
d) Amplified music
e) Waste collection services
f) Appropriate maintenance to ensure ongoing noise compliance / inspections for pool pump, mechanical plan, motors, equipment, air-conditioning, exhaust fans, refrigeration comply with the Noise

Policy for Industry NSW EPA, 2017; and that vibration noise to residents in the development is suitably managed so as not be offensive / unreasonably disruptive.

The plan is to be prepared prior to the issue of the final occupation certificate and a copy of the plan (for reference) is to be submitted to Northern Beaches Council Environmental Health Services.

Reason: To maintain the residential amenity of residential premises."

E. Add Condition No.66C Mechanical Ventilation Certification, to read as follows:

"66C. Mechanical Ventilation Certification

a) Certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system will be compliant with the requirements of Australian Standard 1668.
b) Exhaust to cooking equipment is to discharge vertically.
c) Mechanical exhaust is required for the café if any cooking (apart from only reheating) is being carried out.
d) Where grilling, BBQ cooking, charcoal cooking , coffee roasting and any odour producing process is carried out, smoke and odour control equipment is to be incorporated in the design of the system to eliminate any smoke or odour nuisance to any neighbouring residential premises.
e) Condenser units are to be located on the roof top (central area) as shown on the plans to avoid noise / fan discharge within the light wells.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority interim / final occupation certificate.

Reason: To ensure that the mechanical ventilation system complies with the design requirements."

F. Add Condition No.66D Plans of Kitchen Design Construction and Fitout, to read as follows:

"66D. Plans of Kitchen Design Construction and Fitout

Detailed plans that demonstrate compliance with Standard 3.2.3 of the *Australian and New Zealand Food Standards Code,* the *Food Act 2003* and *Australian Standard AS 4674 'Design, construction and fit out of food premises'*, must be submitted to and approved by the Certifying Authority prior to the Construction Certificate. These plans are to be prepared by a suitably qualified person.

The plans must detail adequate provision for storage including separate storage of food, equipment, chemicals and personal belongings.

Reason: To ensure that the Food premise complies with the design construction and fit-out requirements."

G. Add Condition No.66E Kitchen Design Construction and Fitout of Food Premises, to read as follows

"66E. Kitchen Design Construction and Fitout of Food Premises

The construction fit-out and finishes of the food premises must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, the Food Act 2003 and Australian Standard AS 4674 'Design, construction and fit out of food premises'. Prior to any Occupation Certificate (OC) being issued certification is to be provided by a suitably qualified person that the fit-out complies with the

above requirement.

Reason: To ensure that the kitchen complies with the design requirements."

H. Add Condition No.66F Adequacy of Sanitary Facilities, to read as follows:

"66F. Adequacy of Sanitary Facilities

The number of sanitary facilities (closet pans, urinals and washbasins) to be provided for use by employees and patrons (male, female, accessible/ambulant) for all shops/cafes/restaurants including any outdoor seating must comply with the requirements contained within the *National Construction Code of Australia.*

Detailed plans and specification documents are to be prepared by appropriately qualified persons in order to demonstrate that adequate and compliant sanitary facilities are to be provided in accordance with the requirements of the *National Construction Code (NCC) of Australia 2016, Volume 1, Part F2 – Sanitary and Other Facilities.*

Hand washing facilities are to:
i. be accessible
ii. contain hot and cold water temperature mixers
iii. be protected from the weather
iv. be supplied with liquid soap dispensers
v. contain hygienic hand drying facilities - automatic air dryers or disposable paper towels.

The plans and specification documents are to be submitted to the Certifying Authority for assessment prior to the issue of the Construction Certificate.

Reason: Ensure that potential impacts relating to public health and the receiving environment are considered and adequately addressed."

I. Add Condition No.66G Registration of Food Business, to read as follows:

"66G. Registration of Food Business

The food business must be registered with the Appropriate Regulatory Authority, prior to Occupation Certificate being issued.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority".

J. Add Condition No.66H Waste / Recycling Requirements, to read as follows:

"66H Waste / Recycling Requirements (Waste Plan)

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.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided."

K. Add Condition No.66I Positive Covenant for Waste Services, to read as follows:

"66I Positive Covenant for Waste Services

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

Reason: To ensure ongoing access for servicing of waste facilities"

L. Add Condition No.66J Authorisation of Legal Documentation Required for Waste Services, to read as follows:

"66J. Authorisation of Legal Documentation Required for Waste Services

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

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

Reason: To create encumbrances on the land."

M. Add Condition No.66K Commercial Waste and Recycling Storage, to read as follows:

"66K. Commercial Waste and Recycling Storage

Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins as shown on the approved plans.

Bins must be serviced from within the room and must not be presented on public land at any time.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed."

N. Amend Condition No.95 Allocation of Spaces, to read as follows:

"95. Allocation of Spaces

Carparking is to provided in accordance with the approved modification plans (as detailed in condition No."1C Modification of Consent - Approved Plans and Supporting Documentation"

Reason: To ensure that adequate parking facilities to service the development are provided on site as per the approved plan".

O. Delete Condition No.35 Roof Top Deck Area, to read as follows:

35. [Deleted]

P. Delete Condition No.36a Reduction in Basement Level 1 Auxiliary Space for Restaurant/Café, to read as follows:

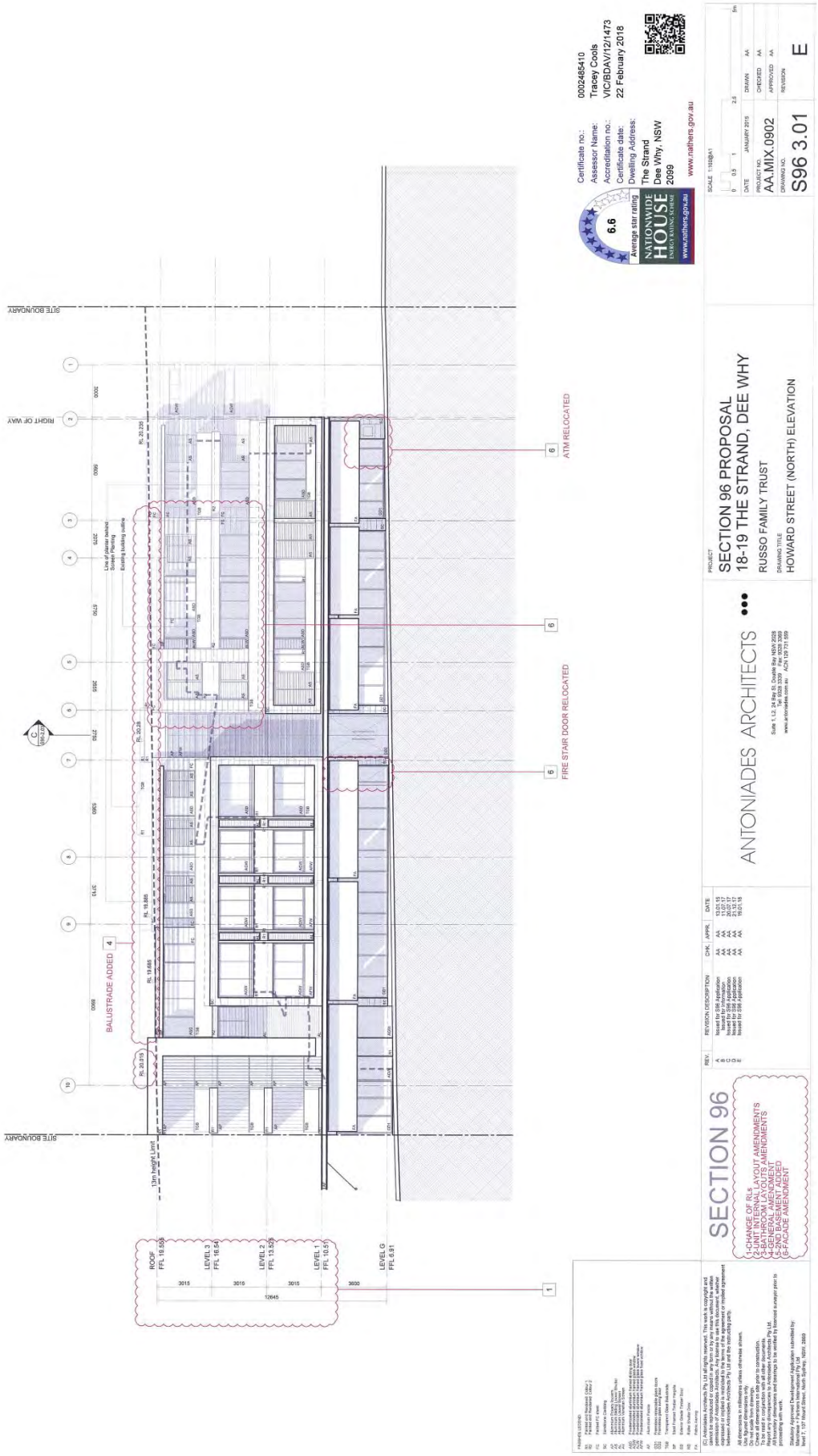
36a [Deleted]

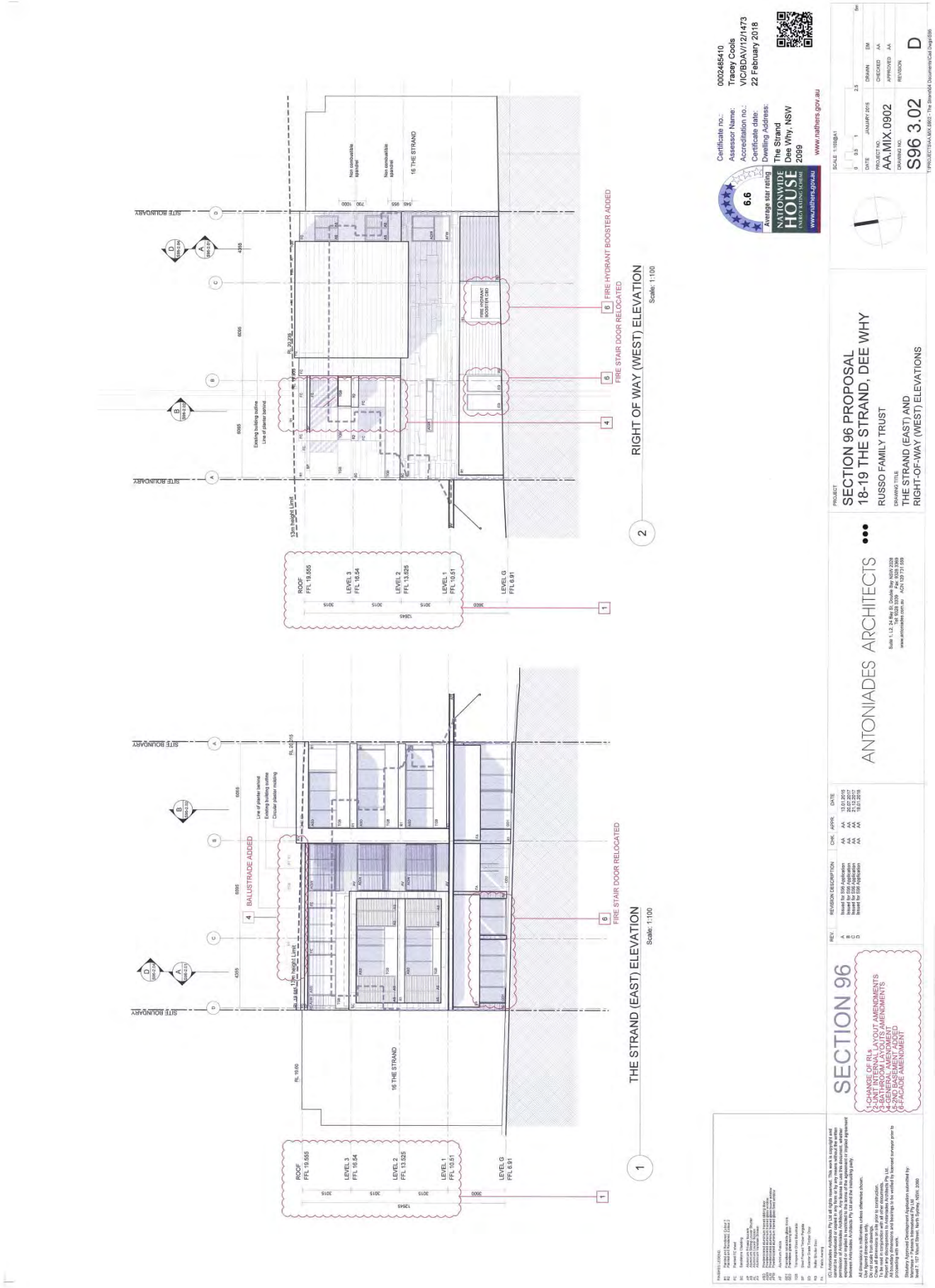
Q. Delete Condition No.36b Acoustic Privacy Protection Between Units 1 & 2 and Units 5 & 6, to read as follows:

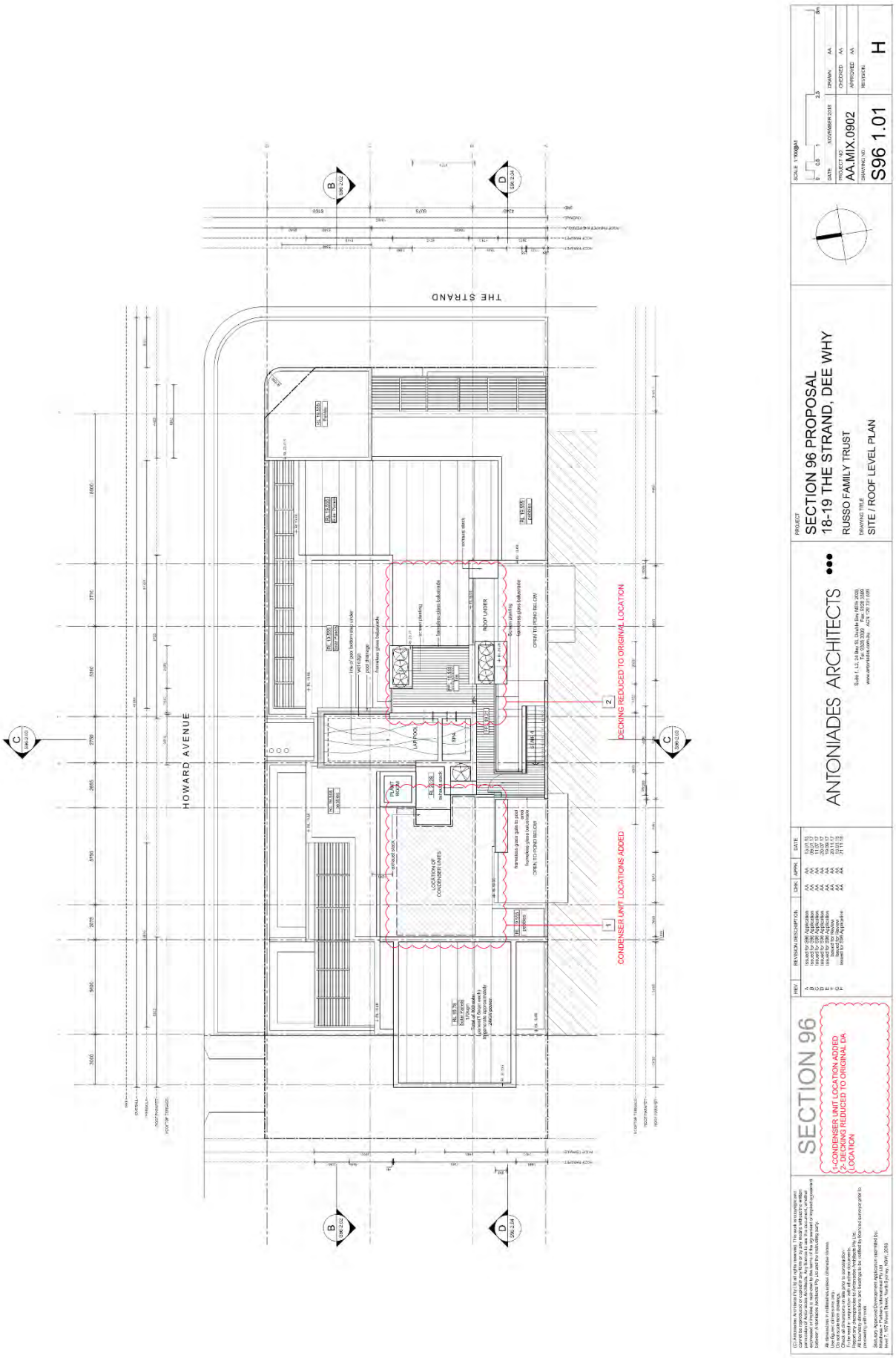
36b [Deleted]

R. Delete Condition No.36c Privacy Screening Between Units 7 and 8 and for Adjoining Property, to read as follows:

36c [Deleted]


SITE BOUNDARY
RIGHT OF WAY
BALUSTRADE ADDED
13m height Limit
ROOF FFL 18.505
LEVEL 3 FFL 16.5
LEVEL 2 FFL 13.505
LEVEL 1 FFL 10.51
LEVEL G FFL 6.91
12645
ATM RELOCATED
FIRE STAIR DOOR RELOCATED
Certificate no.: 0002485410
Assessor Name: Tracey Cools
Accreditation no.: VIC/BDAV/12/1473
Certificate date: 22 February 2018
Dwelling Address: The Strand Dee Why, NSW 2099
6.6
Average star rating
NATIONWIDE HOUSE ENERGY RATING SCHEME
www.nathers.gov.au
SECTION 96 PROPOSAL
18-19 THE STRAND, DEE WHY
RUSSO FAMILY TRUST
HOWARD STREET (NORTH) ELEVATION
ANTONIADES ARCHITECTS
SECTION 96
1-CHANGE OF RLs
2-UNIT INTERNAL LAYOUT AMENDMENTS
3-BATHROOM LAYOUTS AMENDMENTS
4-GENERAL AMENDMENT
5-BALUSTRADE ADDED TO LEVEL 3
6-FACADE AMENDMENT
AA.MIX.0902
S96 3.01
E


THE STRAND (EAST) ELEVATION
Scale: 1:100
RIGHT OF WAY (WEST) ELEVATION
Scale: 1:100
BALUSTRADE ADDED
FIRE STAIR DOOR RELOCATED
FIRE HYDRANT BOOSTER ADDED
16 THE STRAND
ROOF FFL 15.555
LEVEL 3 FFL 16.54
LEVEL 2 FFL 13.525
LEVEL 1 FFL 10.51
LEVEL G FFL 6.91
SITE BOUNDARY
SECTION 96
1-CHANGE OF RLs
2-PARTITIONAL LAYOUT AMENDMENTS
3-BATHROOM LAYOUTS AMENDMENTS
4-GENERAL AMENDMENT
5-ROOF BALUSTRADE ADDED
6-FACADE AMENDMENT
ANTONIADES ARCHITECTS
SECTION 96 PROPOSAL
18-19 THE STRAND, DEE WHY
RUSSO FAMILY TRUST
THE STRAND (EAST) AND
RIGHT-OF-WAY (WEST) ELEVATIONS
Certificate no.: 0002485410
Assessor Name: Tracey Cools
Accreditation no.: VIC/BDAV/12/1473
Certificate date: 22 February 2018
Dwelling Address: The Strand Dee Why, NSW 2099
6.6
Average star rating
NATIONWIDE HOUSE ENERGY RATING SCHEME
www.nathers.gov.au
AA.MIX.0902
S96 3.02
D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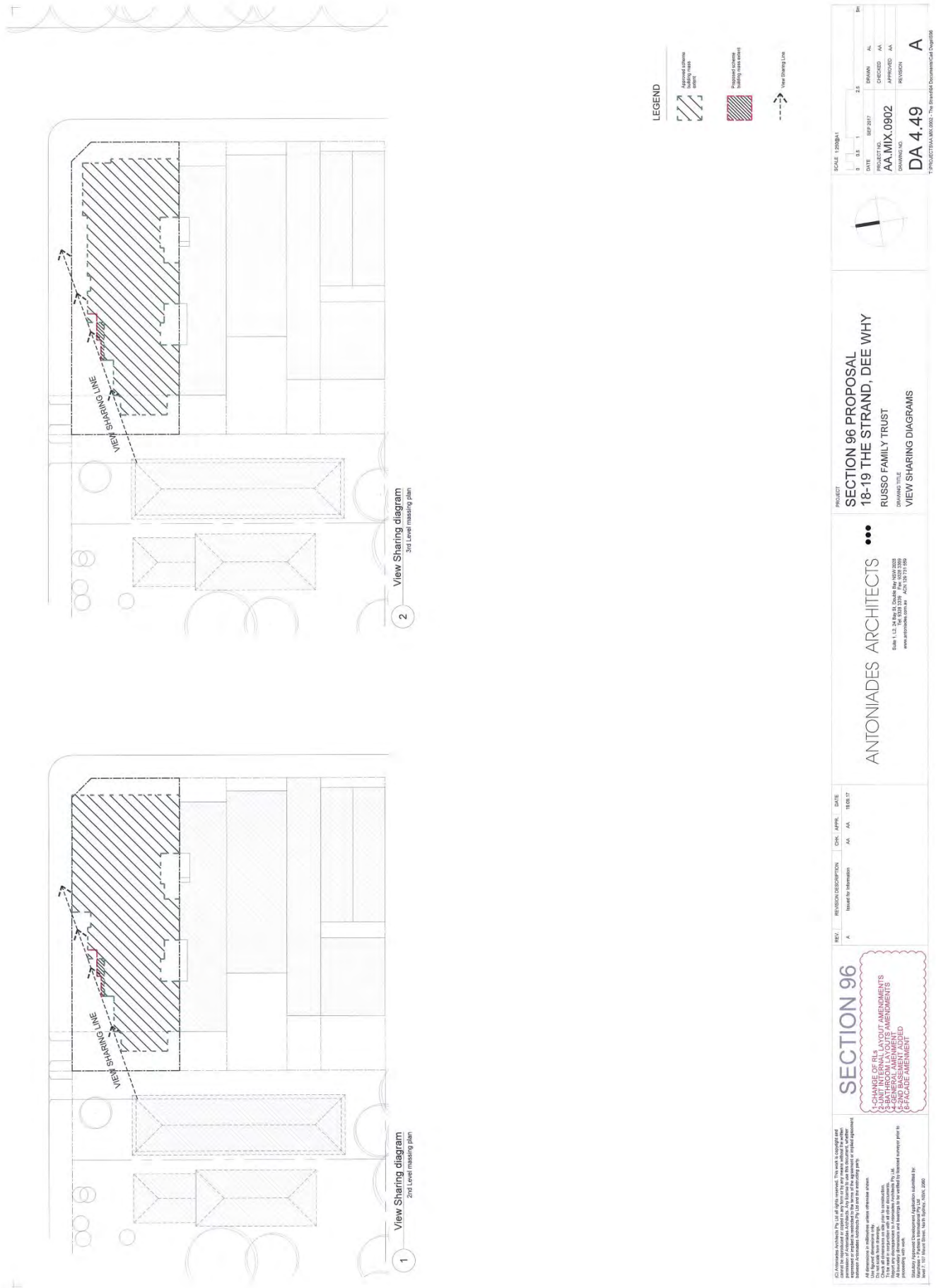
HOWARD AVENUE
DECKING REDUCED TO ORIGINAL LOCATION
CONDENSER UNIT LOCATIONS ADDED
LOCATION OF CONDENSER UNITS
SECTION 96
1-CONDENSER UNIT LOCATION ADDED
2-DECKING REDUCED TO ORIGINAL DA LOCATION
ANTONIADES ARCHITECTS
SECTION 96 PROPOSAL
18-19 THE STRAND, DEE WHY
RUSSO FAMILY TRUST
SITE / ROOF LEVEL PLAN
AA.MIX.0902
S96 1.01
H


VIEW SHARING LINE
Proposed
1 View Sharing diagram
2nd Level massing plan
VIEW SHARING LINE
Proposed
2 View Sharing diagram
3rd Level massing plan
LEGEND
View Sharing Line
SECTION 96
1-CHANGE OF RLs
2-LIFT FOOTPRINT LAYOUT AMENDMENTS
3-BATHROOM LAYOUTS AMENDMENTS
4-GENERAL AMENMENT
5-DWELLING LAYOUT REVISED
6-FACADE AMENMENT
REV/ REVISION DESCRIPTION CHK. APPR. DATE
A Issued for Information AA AA 18.09.17
ANTONIADES ARCHITECTS
Suite 1.L2, 24 Bay St, Double Bay NSW 2028
Ph +61 (0) 9326 7555 Fax +61 (0) 9326 7599
www.antoniades.com.au ACN 139 731 989
PROJECT
SECTION 96 PROPOSAL
18-19 THE STRAND, DEE WHY
RUSSO FAMILY TRUST
DRAWING TITLE
VIEW SHARING DIAGRAMS
SCALE 1:250@A1
DATE SEP 2017
PROJECT NO. AA.MIX.0902
DRAWING NO. DA 4.49
REVISION A
DRAWN AL
CHECKED AA
APPROVED AA

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All dimensions in millimetres unless otherwise shown.
Use figured dimensions only.
Do not scale from drawing.
Check all dimensions on site prior to construction.
Discrepancies between drawings and other documents.
Report any discrepancies to Antoniades Architects Pty Ltd.
Structural dimensions and drawings to be verified by licensed surveyor prior to proceeding with work.

Statutory Approved Development Application submitted by:
Antoniades Architects Pty Ltd
level 7, 157 Mount Street, North Sydney, NSW, 2060

SECTION 96

1-CHANGE OF RLs
2-UNIT INTERNAL LAYOUT AMENDMENTS
3-SITE PROPOSAL LAYOUTS AMENDMENTS
4-GENERAL AMEMENT
5-2ND BASEMENT ADDED
6-FACADE AMEMENT

REV.	REVISION DESCRIPTION	CHK.	APPR.	DATE
A	Issued for Site Application	AA	AA	19.09.17

ANTONIADES ARCHITECTS

Suite 1.12, 24 Bay St, Double Bay NSW 2028
Tel: 9328 3338 Fax: 9328 3389
www.antoniades.com.au ACN: 097 177 559

PROJECT
SECTION 96 PROPOSAL
18-19 THE STRAND, DEE WHY
RUSSO FAMILY TRUST

DRAWING TITLE
SOLAR ACCESS STUDY

SCALE: NTS@A1
0 0.5 1 2.5 5m

DATE	SEP 2017
PROJECT NO.	AA.MIX.0902
DRAWING NO.	S96 4.81
DRAWN	AA
CHECKED	AA
APPROVED	AA
REVISION	A

ITEM 3.5	**DA2018/0304 - 22 REDMAN ROAD, DEE WHY - DEMOLITION WORKS AND CONSTRUCTION OF A BOARDING HOUSE DEVELOPMENT**
REPORTING OFFICER	**Steve Findlay**
TRIM FILE REF	**2018/750640**
ATTACHMENTS	**1 Assessment Report** **2 Plans**

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2018/0304 for demolition works and construction of a boarding house development at Lot K DP 402030, 22 Redman Road, Dee Why subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/0304

Responsible Officer:	Daniel Milliken
Land to be developed (Address):	Lot K DP 402030, 22 Redman Road DEE WHY NSW 2099
Proposed Development:	Demolition works and construction of a boarding house development
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Ralph Ivan McKavanagh Lucy Anne McKavanagh
Applicant:	Ralph Ivan McKavanagh Lucy Anne McKavanagh

Application lodged:	28/02/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	25/07/2018 to 12/08/2018
Advertised:	28/07/2018
Submissions Received:	56
Recommendation:	Refusal

Estimated Cost of Works:	$ 2,345,900.00

ASSESSMENT INTRODUCTION

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

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

to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
Warringah Development Control Plan - A.5 Objectives
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - C9 Waste Management
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot K DP 402030 , 22 Redman Road DEE WHY NSW 2099
Detailed Site Description:	The subject site consists of one allotment, known as No. 22 Redman Road. Redman Road is split into an upper section and a lower section. The site sits on the southern side of the end of the cul-de-sac formed by the upper section. The site has an area of 805.7m^2 and slopes down towards the east with an elevation difference of approximately 5.0m from the south west corner across the property to the north east corner. Existing on the site is a part single/part two storey dwelling and a detached single garage. Six established trees are located towards the rear of the site with smaller vegetation scattered around the outside of the site. The nearby development consists of detached single and two storey residential dwellings. An R3 zone containing residential flat buildings is located on the lower section of Redman Road, to the east of the site. A road reserve sits to the north of the site between the upper and lower sections of Redman Road. This area of road reserve contains a pathway with steps allowing pedestrian access from the upper section to the lower section of Redman Road.

Map:

SITE HISTORY

Previous Applications

PLM2017/0120
A prelodgement meeting was held to discuss the proposal prior to the submission of the Development Application.

Relevant comments from the notes for this meeting include:

Compliance with SEPP (Affordable Rental Housing) 2009

The proposal must demonstrate compliance with the requirements of the SEPP. In this regard, architectural plans should show details of landscape area, private open space areas, vehicle and bike parking and accommodation size.

As discussed at the meeting, more details are required in relation to cl.27 "Development to which this Division applies", including the following;

- *That the site is within an accessible area (i.e. 400m walking distance from a bus stop);*
- *Demonstrate that the walking distance may be safely walked by a pedestrian using, as far as reasonably practicable, public footpaths and pedestrian crossings; and*
- *Availability of bus services (i.e. time tables);*

Advice is to be provided to Council that the staircase/pathway located on the unformed section of Redman Road constitutes a public footpath that can be "safely walked".

In addition, it is noted that the route demonstrated within the submitted information "Accessible Distance – SEPP (SK14)" traverse through private property (19 Mooramba Road & 651 Pittwater Road).

Privacy

The development is to provide a high level of visual and acoustic privacy for occupants and neighbours.

A detailed privacy analysis, including sight lines from side elevation balconies, is to be provided and comprise adjoining and nearby properties, including Nos. 21 to 33 Burne Avenue, Nos. 30 & 32 Redman Road and No. 24 Redman Road.

The privacy analysis will determine whether any design modifications or screening devices are required.

Rear Setback & Landscape Open Space (LOS)

The development does not comply with the minimum 6.0m rear boundary setback and 40% LOS controls under the WDCP.

A minimum 40% LOS is to be provided on site.

The rear setback non-compliance can be supported, provided it is demonstrated that it does not cause adverse amenity impacts, including privacy and view loss.

Conclusion

The proposal can be supported subject to the following:

1. *Compliance with SEPP (Affordable Rental Housing) 2009, including that the site is "accessible";*
2. *Acceptable view sharing and privacy impacts;*
3. *Relocation of the bin-storage area;*
4. *Minimum 40% LOS;*
5. *Maximum 8.5m building height; and*
6. *Minimise the visual impact of the building.*

Comments on PLM Issues based on Current Application:

In relation to the six points raised in the PLM, the following brief comments are made:

1. The site is not "accessible" under the definition in the SEPP ARH and therefore this SEPP does not apply to the site. The applicant amended their DA such that the development is being assessed under WLEP 2011.
2. The proposal does not result in unreasonable view loss and the privacy impacts that would warrant refusal of the application, subject to special conditions in relation to privacy protection.
3. The bin storage area is located within the front setback area, however, this is permitted under the WDCP and has been discussed in further detail under Part B5 Side boundary setbacks in this report.
4. 40% LOS has been met.
5. The building sits under the 8.5m height limit.
6. The visual impact of the building is acceptable and the architectural style of the building is of a high quality. This is discussed in further detail under Part D9 Building Bulk in the WDCP section of this report.

<u>History of the Current Application</u>

The application was lodged on 28 February 2018 and notified to surrounding landowners and advertised in the Manly Daily.

Amended plans were submitted on 13 July 2018 in response to concerns raised by Council and the nearby residents, and in response to the increased car parking requirements announced by the Department in relation to *State Environmental Planning Policy (Affordable Rental Housing) 2009* (SEPP ARH). These amended plans were re-notified and readvertised.

On 5 September 2018, the applicant made two changes to this application. The first was a minor amendment to the plans, which were not re-notified as the amendments deleted a boarding room and did not change the external appearance or impacts of the develelopment. The second change was an acknowledgement from the applicant that Council did not consider the site to be in an 'accessible area' (discussed in further detail below) and therefore the SEPP ARH did not apply to the development. Instead, the applicant requested that the application be assessed under the Warringah Local Environmental Plan 2011 (WLEP 2011).

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks consent for demolition works and the construction of a boarding house with basement car parking.

The development is commonly referred to as a *'new generation boarding house'* which essentially means that each room is self contained.

The application was originally lodged under the provisions of SEPP ARH. The WLEP 2011 also permits Boarding Houses with consent in the R2 Low Density Residential zone.

During the assessment, it was confirmed that the proposal does not meet the location requirements of the SEPP. The applicant subsequently requested that the application be assessed under the WLEP 2011.

The development includes the following works:

- Demolition of all existing structures on site
- Site preparation works, including excavation for the basement carpark
- The construction of a two storey, 15 room boarding house (rooms of between 13sqm and 23.2sqm in area) including 1 managers unit with a basement car park
- The construction of a new driveway, pedestrian pathways, paving and bin enclosure
- Site landscaping

In detail, the boarding house comprises:

<u>Basement Level</u> (RL 43.655)

- Eight (8) car parking spaces, including a managers space and a disabled car parking space
- Six (6) bicycle spaces
- Five (5) motorcycle spaces
- Lift and lobby

<u>Ground Floor Level</u> (RL 46.355)

- Eight (8) boarding rooms
- Indoor common area with kitchen facilities
- Common outdoor area
- Common circulation areas
- Lift

First Floor Level (RL 49.355)

- Six (6) boarding rooms
- Managers unit
- Common circulation areas
- Lift

The boarding house is classified as a Registrable (General) Boarding House under the Boarding Houses Act 2012 and is to be managed in accordance with the relevant provisions of that Act.

Boarding House Management Plan

The application includes a Boarding House Management Plan which contains the following:

- Objectives
- Management
- On Site Management Responsibilities
- House Rules
- Lodgers
- Amenity - Each Room
- Amenity - Common Areas (Internal)
- Amenity – Common Areas (External)
- Maintenance – The Property
- Fire Safety
- Security
- Bicycle Storage
- An attachment listing the House Rules.

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	None applicable.

Section 4.15 Matters for Consideration'	**Comments**
instrument	
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters would be addressed via a condition of consent should the application be approved. Clauses 54 and 109 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. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter would be addressed via a condition of consent should the application be approved. 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 would be addressed via a condition of consent should the application be approved. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter would be addressed via a condition of consent should the application be approved. 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 would be addressed via a condition of consent should the application be approved.
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	(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. (ii) **Social Impact** The use of the site as a boarding house will not in itself result in a detrimental social impact given boarding houses are permissible in the zone, residents of the boarding house would reside in the facility in accordance with a Plan of Management and their lease agreements and it is anticipated that a range of persons from the general community will occupy the facility. Overall, the proposal will not have a detrimental social impact.

Section 4.15 Matters for Consideration'	Comments
	(iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the proposed affordable residential housing land use.
Section 4.15 (1) (c) – the suitability of the site for the development	Whether the site is suitable for the proposed development is one of the fundamental issues in the assessment of this application. This is because the site is not within an ***'accessible area'*** under the SEPP ARH, meaning that the SEPP does not apply. It can therefore be argued that based on the fact that the site is not "accessible" under the State Policy which governs boarding houses, that the site is not suitably located for development of this type because of the excessive walking distances to the nearest bus stops. However, the WLEP 2011 lists a boarding house as a permissible form of development on the subject land. As the SEPP does not apply and the development is being assessed under the WLEP 2011, the site may potentially be suitable on a merits assessment. In determining whether the site is suitable on merit, four criteria are considered to be relevant in such a determination, as detailed below: *a) The physical dimensions and topography of the site, are they suitable for the size of the proposed development?* *b) The location of the site in relation to shops, transport options and other necessary services.* *c) The means of access from the site to these shops, transport options and services.* *d) The availability of local infrastructure to cope with the development.* Comments are provided against each of these criteria as follows: ***a) The physical dimensions and topography of the site, are they suitable for the size of the proposed development?*** The site has sufficient dimensions to accommodate the proposed boarding house. This is demonstrated by the compliance with setback controls, particularly the side setbacks which are much greater than the 900mm minimum requirement. The topography of the site does slope down towards the east, however, the building remains under the height limit and within the side boundary envelopes. In this regard, the dimensions and topography of the site are suitable for the proposed development. ***b) The location of the site in relation to shops, transport options and other necessary services*** The site is located close to the Dee Why Town Centre (approximately

Section 4.15 Matters for Consideration'	Comments
	300m to the Redman Road Plaza, 420m to the Dee Why Grand Shopping Centre and approximately 510m to both the north and south bound B-Line bus stops). As such, this site has good access to a large range of shops, transport and services. The above distances are not considered to be unreasonable for residents to be able to walk to and from the destinations. This is despite the SEPP stipulating that a walking distance of 400 metres of a bus stop used by a regular bus service is the maximum for boarding house developments. To put this site into context, the site is approximately 412m walking distance of a bus stop used by a regular bus service. It is not considered to be critical to the case that an extra 12.0m of walking renders the site unsuitable for a boarding house. This is because the 400m walking distance only considers bus services (as there are no train lines on the Northern Beaches) and only requires one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday. This is not a difficult criteria to meet. Most bus stops are serviced at least once an hour, meaning that the potential location for boarding houses on the Northern Beaches is very broad and includes many areas with much worse access to shops, service and high frequency transport options. It is reasonable to conclude that properties near the Dee Why Town Centre are more suitable for boarding houses than properties in lower density suburbs at distance from such a centre, that merely rely upon a bus service to gain access to such services and amenities. This site is located in close proximity to the Dee Why Town Centre and therefore has very good access to a large range of shops, transport and services. In this regard, the site is considered to be suitably located in terms of the walking distance to shops, transport options and other necessary services. ***c) The means of access from the site to these shops, transport options and services*** The "means of access" is the critical factor in the determination of whether this site is suitable for a boarding house. Having determined that the distance is not fatal to the application, the nature and characteristics of the path of travel to the shops, transport options and services is put to the test. Site reconnaissance reveals that the pedestrian pathway is relatively flat between the Dee Why Town Centre (i.e. the shops, transport and services in Pittwater Road) and a point approximately 70m east of the subject site. In this last 70 metres, there is an abrupt change in elevation, which is characterised by a series of stair sections and intervening footpaths. In

Section 4.15 Matters for Consideration'	Comments
	total, there are 71 steps in 12 separated sections, with a variable number of steps per section. This arrangement allows pedestrians to traverse the steep slope from the low side (east) to the high side (west) of Redman Road. The rise in elevation is approximately 19 metres. The subject site sits at (or very close to) the top of the steps on the southern side of Redman Road. Having steps on a public pathway is not an unusual occurrence on the Northern Beaches, especially given the often steep topography of the area. The pathway is well used by residents living above the escarpment, as it is a circuitous journey to avoid the steps. Multiple visits to the site reveals many people walking the path in both directions. The question of whether this access is reasonable and appropriate for the future boarding house residents requires an evaluation of the relative difficulty that individuals of a higher density development (as opposed to detached dwellings) would experience considering the likely residents would include seniors and those with lesser levels of mobility and there is a greater number of trips due to the reliance upon walking and cycling. It is clear that persons in a wheelchair could not use this path. Persons who ride bicycles could not use the path and would have to carry a bike up a long stretch of steps. It is also likely that anyone with significant mobility issues due to age or permanent disability will find it extremely difficulty to negotiate the steps. It is important to note that this proposal is not for seniors housing. That type of housing has its own SEPP (Seniors Housing) with its own accessibility standards that sets maximum gradients and defines what a '*suitable access pathway'* is (i.e. "*a path of travel by means of a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like*"). Neither the SEPP ARH nor the Warringah LEP 2011 includes this standard or any standard like it. The closest to this is the definition in the SEPP ARH for *walking distance* (i.e. "*'walking distance' means the shortest distance between 2 points measured along a route that may be safely walked by a pedestrian using, as far as reasonably practicable, public footpaths and pedestrian crossings"*). This definition does not set gradients and does not require the pathway to be suitable for access by means of an electric wheelchair, motorised cart or the like. Importantly, boarding houses are intended to cater for a broad range of residents, generally in the lower socio-economic bracket. It is anticipated that this could include seniors or people with a disability. This is contrasted with housing for seniors or people with a disability, which ***must*** cater for these types of residents. Boarding house residents generally have a choice of where to live just like most members of the community and there are many existing boarding houses on the Northern Beaches to choose from. Each facility has a different level of ease of access, but none have difficult to negotiate stair climbing in the public domain as part of the

Section 4.15 Matters for Consideration'	Comments
	means of access to transport and facilities. As mentioned above, as the proposal has a higher density of residents than detached dwellings, it should have a higher standard of access, given the higher potential for persons with physical limitations, either due to age or impairment. The subject site may be suitable for a boarding house provided the means of access is safe and easy to negotiate. Therefore, the issue of the steps is critical to the case of whether the means of access is suitable. To further determine the suitability of the pathway, it was observed that the steps are illuminated at night with lights at the top, middle and bottom. There is a seat one third of the way up the steps (allowing anyone walking up the steps to rest) and another two thirds of the way up. There are hand rails along at least one side of all 12 stepped sections and on both sides of two middle sections (which contain 24 of the 71 steps). The rest of the path (i.e. between the bottom of the steps and Dee Why Town Centre) is generally flat and easy to negotiate. Despite these steps not being strictly subject to any legislative restrictions on gradients or the need to be suitable for wheelchairs, they still need to be appropriate for the intended use. Walking up the 71 steps is not an easy task, especially when carrying shopping, a baby, a bicycle or the like. It is important to note that the residents will *have* to walk these steps given, there is no other option to reach Dee Why Town Centre on foot that is of a reasonable distance and, the limited number of parking spaces on the site (i.e. less spaces than the number of rooms or residents). Walking down the steps, while obviously an easier exercise, is still a demanding task for someone who is not in good physical health or has impairment. Requiring the boarding house residents to walk this path, likely on a daily basis and often multiple times during the day and/or night, is considered to be an unreasonable imposition. These steps are therefore not considered to be a reasonable or appropriate means of access for a boarding house development. Based on this, the means of access from this site to the nearest shops, transport options and services is considered to be unsuitable for the proposed development. ***d) The availability of local infrastructure to cope with the development.*** The site has access to water, sewerage, electricity and gas. The proposal will need to be passed by Sydney Water before the issue of any construction certificate. As such, the site has access to infrastructure to cope with the development and is suitable in this regard. **Conclusions on Site Suitability**

Section 4.15 Matters for Consideration'	Comments
	The site meets three of the four criteria set out above. However, due to the inability to provide a suitable means of access from the site to the nearest shops, transport options and services, the site is not considered to be suitable for the proposed development. This issue forms the main reason for recommending refusal of the application.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	The proposal was notified twice. The first round of notification was for the original proposal. The second round was for an amended design that was submitted to address concerns raised by Council and the community and to address parking changes within the SEPP ARH. **First Notification** The first round of notification resulted in 36 submissions (some of these were multiple submissions from the same objector, but raising new issues) being received, all objecting to the proposal. **Second Notification** The second round of notification resulted in 43 submissions (again, some of these were multiple submissions from the same objector) being received, all objecting to the proposal. **Overall Response to Notification** Overall, submissions were received from 56 different members of the public, including surrounding and nearby residents over the two notification periods. All issues raised in the submissions are addressed in the section "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	The two rounds of notification resulted in submissions from 56 different members of the public, including surrounding and nearby residents, all objecting to the proposal. This significant public interest and opposition to the proposal is detailed in the issues raised in the submissions. All these issues have been addressed. The assessment undertaken and outlined in this report has found the proposal to be consistent with the relevant standards and requirements, with the exception of the accessibility aspects of the proposal. The proposal is consistent with the Aims of the Plan and all relevant development standards and clauses of the Warringah Local Environmental Plan 2011, The proposal is consistent with the overall objectives and all relevant clauses of the Warringah Development Control Plan, with the exception of the Accessibility provisions of the WDCP, which although not applicable to residential development, are good objectives and requirements in the

Section 4.15 Matters for Consideration'	Comments
	absence of specific standards for boarding houses not under the SEPP ARH. The proposed boarding house is somewhat different to the single detached dwelling that currently exists on the site and different to the surrounding development on the high side of Redman Road. There are no residential flat buildings on the high side of Redman Road. The introduction of a higher density form of development in the area above the escarpment and the stigma around Boarding Houses in traditional low scale residential areas has contributed to the number of submissions against the proposal. It is acknowledged that boarding houses are a permissible land use on the site under the WLEP 2011 and provides for additional housing supply and choice in the area. The design of the boarding house is generally satisfactory, being well set back from all boundaries and in a landscaped setting. The design performs well against the relevant controls, does not result in any unacceptable amenity impacts on surrounding properties and it is generally compatible with the character of the local area. However, the above assessment has found that the site is not suitable for the proposed development principally due to unsatisfactory means of access. In this regard, it is not in the public interest to approve this development given the inappropriate planning outcome and the undesirable precedent it would set. This has been included in the recommendation for refusal of the application.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

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 56 submission/s from:

Name:	Address:
Mrs Olivia Louis Haddrick	1 Yallaroi Road NARRAWEENA NSW 2099
Ant Haddrick	
Mr Wayne McLean Eadie	11 Selby Avenue DEE WHY NSW 2099
MB Town Planning Pty Ltd	PO Box 415 GORDON NSW 2072

Name:	Address:
Mrs Sandra Elizabeth Young	29 Aranda Drive DAVIDSON NSW 2085
Ms Jill Elaine Cordery	138 Blackbutts Road FRENCHS FOREST NSW 2086
Mrs Jill Lorraine Brutnell	111 McIntosh Road NARRAWEENA NSW 2099
Dennis Graham Brutnell	111 McIntosh Road NARRAWEENA NSW 2099
Deirdre Hatton	29 Aranda Drive DAVIDSON NSW 2085
Mr Cyril Charles Perry Mrs Kathleen Cissy Perry	30 Redman Road DEE WHY NSW 2099
Dr Annette Patricia Sammut	33 Burne Avenue DEE WHY NSW 2099
Rachel Clark	80 Elanora Road ELANORA HEIGHTS NSW 2101
Pieta Jean Stenner	12 Selby Avenue DEE WHY NSW 2099
Mr Tony Saliba	32 Redman Road DEE WHY NSW 2099
Mrs Kara Louise Hillier	15 Selby Avenue DEE WHY NSW 2099
Mrs Patricia Mary Pearce	35 Redman Road DEE WHY NSW 2099
Mr Karl Anthony Maryska	26 Redman Road DEE WHY NSW 2099
Mr Geoffrey Robert Clark	21 Toronto Avenue CROMER NSW 2099
Mr Timothy John Riley Ms Linda Therese Riley	41 Redman Road DEE WHY NSW 2099
Mills Oakley Lawyers	Australia Square Post Shop Po Box H316 AUSTRALIA SQUARE NSW 1215
Name withheld	Address withheld
Mrs Joan Amy Barrell Mr Greg Barrell	39 Redman Road DEE WHY NSW 2099
Mr Matthew Benson	PO Box 415 GORDON NSW 2072
Mrs Jodie Blake	10 Lae Place ALLAMBIE HEIGHTS NSW 2100
Mrs Robin Margaret Louisa Maryska	26 Redman Road DEE WHY NSW 2099
Rebecca Anne Tissington	16 A Gladys Avenue FRENCHS FOREST NSW 2086
NSW Government - Brad Hazzard MP	PO Box 405 DEE WHY NSW 2099
Mrs Nicole Belinda Parsons	5 Mills Place BEACON HILL NSW 2100
Mr Jonathan Leigh Paton	13 Selby Avenue DEE WHY NSW 2099
Francis Kevin Harrold	11 Akora Street FRENCHS FOREST NSW 2086
Ms Heather Jane McNeill	16 Selby Avenue DEE WHY NSW 2099
Belinda Jane Azar	41 Dalley Street QUEENSCLIFF NSW 2096
Chunhui Huang	44/57 Cook Road CENTENNIAL PARK NSW 2021
Ms Rachel Louise Kernaghan	4 Selby Avenue DEE WHY NSW 2099
John Trim	66 Alleyne Avenue NORTH NARRABEEN NSW 2101
Mrs Barbara Trim	3 / 7 Richmond Avenue DEE WHY NSW 2099
Mr Antonino Sidoti	249 Alfred Street CROMER NSW 2099
Mr Albert Thomas Langford	1 Selby Avenue DEE WHY NSW 2099
Lisa Shaw	27 Betty Hendry Parade NORTH RYDE NSW 2113

Name:	Address:
Mr Neil David Cunningham	4 Selby Avenue DEE WHY NSW 2099
Mrs Yong Xue Cheng	14 Whaddon Avenue DEE WHY NSW 2099
Leanne Saliba	32 Redman Road DEE WHY NSW 2099
Mr Kenneth John McNaughton	1 Whaddon Avenue DEE WHY NSW 2099
Tatiana Yuryevna Tarnopolskaya Mr Alexandre Tarnopolsky	C/- Hotondo Hornsby 9/4 Hamley Road MT KU-RING-GAI NSW 2080
Mrs Anne Nancarrow	7 Arnold Street RYDE NSW 2112
Ms Kerryn Margaret Chad	35 Ocean Grove COLLAROY NSW 2097
Mr Sean Macrae	15 Whaddon Avenue DEE WHY NSW 2099
Ms Gopala Maurer	18 Gladys Avenue FRENCHS FOREST NSW 2086
Mr Zahi Habchy	74 Runyon Avenue GREYSTANES NSW 2145
Mrs Inga Thuy-Hoang Freiin Von Fircks	12 Mundara Place NARRAWEENA NSW 2099
Mr Peter Wheen	6 Sunlea Place ALLAMBIE HEIGHTS NSW 2100
Mr Karl Santa	5 / 29 Redman Road DEE WHY NSW 2099
Mr Howard Curtis Wiggins	5 Selby Avenue DEE WHY NSW 2099
Donna Earsman	5 Selby Avenue DEE WHY NSW 2099
Mr Matthew Lee Geluk Rebecca Jane Middeldorp	57 Redman Road DEE WHY NSW 2099
Dr Devasha Gwenfrewi Scott	30 Ramsay Street COLLAROY NSW 2097

The submissions raised a large number of issues relating to the proposal and boarding houses in general. These issues are summarised in the list below:

- **Non-compliance with SEPP ARH**
- **Character, density and 'overdevelopment'**
- **Boarding houses and their residents**
- **Parking, traffic and pedestrian safety**
- **Suitability of the site**
- **Compliance with the Warringah Local Environmental Plan 2011**
- **Amenity - Privacy, noise and overshadowing**
- **Built form - Building height, side setbacks, number of storeys, bulk and scale**
- **Room sizes**
- **Retention of trees**
- **Landslip and slope stability**
- **Impacts on power lines from new planting**
- **Quality of the plans and documentation**
- **Side boundary fence**
- **Accessibility and disability discrimination**
- **Fire safety**
- **Waste management**
- **Property Values**

The matters raised within the submissions are addressed as follows:

- **Non-compliance with the 'accessible area' requirement under the State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH)**

  The submissions raised concerns that the development does not comply with the SEPP ARH. In particular, concerns were raised around the distance to the bus stop related to whether the site is in an 'accessible area'.

  Comment:

  The submissions are correct in that the site is not in an 'accessible area' as it is more than 400m to the nearest bus stop. The SEPP ARH states that "*this Division* (i.e. the division applying to boarding houses) *does not apply to development on land within Zone R2 Low Density Residential unless the land is within an accessible area*". As a result, the SEPP ARH does not apply to the site.

  However, boarding houses are "Permitted with Consent" in the R2 Low Density Residential zone under the Warringah LEP 2011.

  Since a boarding house in this area is permissible with consent under the WLEP 2011, the non-compliance with the 'accessible area' in the SEPP ARH in itself does not warrant refusal of the application. This matter will be addressed under the WLEP/WDCP assessments.

- **Character, density and 'overdevelopment'**

  The submissions raised concerns that the proposal is not compatible with the character of the local area. The submissions also raised concerns that the density of the development is not suited to the R2 Low Density Residential zone and that the boarding house is an 'overdevelopment' of the site.

  Comment:

  Character has been discussed in detail under the SEPP ARH section, below in this report.

  In summary, the character assessment has found that, in the context of the Land and Environment Court Planning Principles, the proposal is compatible with the character of the local area and surrounding wider locality. It is important to note that 'compatible' is not the same as 'consistent'.

  Whether the proposal is of a density that is too great for the local area can only be determined by whether the use is permissible on the land and how it performs against the relevant controls. The performance against the controls also applies to determining if the proposal is an 'overdevelopment' of the site.

  Boarding houses are permitted with consent in R2 Low Density Residential areas. The site is zoned R2 Low Density Residential and can therefore accommodate a boarding house.

  It is easy to say a particular proposal is an 'overdevelopment' or is of a density that is too great. However, these terms are not well defined and the suitability of the size, scale and intensity of the development is determined on how it performs against descriptive controls, the objectives of those controls and their direct amenity impacts on surrounding and nearby properties.

All non-compliances are discussed in detail, below in this report, as are all potential amenity impacts. Overall, this assessment has found that the proposal performs well against the specific controls, meets the objectives of the controls that it does not comply with, and has no unreasonable direct amenity impacts on surrounding and nearby properties.

Therefore, the proposal is not considered to be an 'overdevelopment' of the site and this issue does not warrant the refusal of the application.

- **Boarding houses and their residents**

The submissions raised concerns that the boarding house will be occupied by residents who are transient. Concerns are also raised that a boarding house does not fit with the social character of the area, that the boarding house residents will make other residents feel unsafe, that the boarding house may be used in ways it is not intended to, such as short term stays, and, the potential activities of the residents (eg: smoking and noise) will be disruptive to the surrounding residents.

Comment:

A variety of persons are likely to reside in the boarding house and will most likely represent a cross section of the community.

This is a common concern raised by the community whenever a boarding house is proposed and is often the result of the stigma that comes with the words 'boarding house' and the more transient nature of the occupants. However, no evidence has been supplied and none has been found in the course of the assessment to indicate that boarding house residents will give rise to any unacceptable social impacts in the area or make existing residents feel unsafe. In addition, the boarding house, if approved, would be run in accordance with a Plan of Management. This would ensure resident's conduct (such as smoking, noise, visitors, etc) is appropriate for maintaining the amenity and safety of the local area.

In the event residents behaviour disturbs the local amenity or raises any safety concerns, the Boarding House Manager will be responsible for policing the occupants in line with the Plan of Management and their lease agreements. Should this not happen, it would then be appropriate for the Police to be notified, the same as with any similar problems for any other type of development (eg: units, single dwellings, etc).

Boarding houses are designed for minimum three months stays and are not used as backpacker or bed and breakfast accommodation. Minimum three month stays would be enforced as a condition of consent should this application be approved and therefore, the boarding house is not considered to be short term occupancy.

As these issues are manageable by conditions, it does not warrant refusal of the application.

- **Parking, traffic and pedestrian safety**

The submissions raised concerns that the development does not provide sufficient on-site car parking and that the increased occupancy of the site will result in traffic congestion and a loss of on-street parking. The submissions also raised concerns that the proposal would increase the safety risk to pedestrians, partly due to the number of cars entering and exiting the site and the layout of the driveway.

Comment:

The number of car spaces is discussed in detail under Part C3 Parking Facilities, in the WDCP section of this report. In summary, the proposal includes 14 boarding rooms and one managers room. The WDCP requires a comparison be made with similar developments to determine a reasonable parking rate. This comparison has found that 0.5 spaces per room is reasonable. The development is therefore required to provide eight on-site parking spaces (i.e. seven for the boarding rooms and one for the manager). The development includes the provision of eight on-site parking spaces and therefore complies.

Given the development provides adequate parking, it is therefore considered that the proposal will not result in unreasonable additional traffic congestion or an unreasonable loss of on-street parking.

The layout of the driveway has been assessed by Council's Development Engineers who raised no objections, subject to conditions. These conditions would, if the application was to be approved, ensure the development meets relevant Australian Standards. In this regard, the sight lines for drivers would be acceptable and would not unreasonably increase the risk to pedestrians.

This matter does not warrant the refusal of the application.

- **Suitability of the site**

The submissions raised concerns that the site is not suitable for the proposed development because of the stairs leading from the high side of Redman Road to the low side.

Comment:

The site is located in an area that is reasonably close to a large range of shops, transport options and other necessary services (i.e. Dee Why Town Centre) and the pathway giving this site access to Dee Why Town Centre is an open, well used public footpath.

However, in order to use this pathway, the boarding house residents would have to negotiate 71 steps from the high side of Redman Road to the low side. Walking up the 71 steps is not an easy task, especially when carrying shopping, baby, bicycle or the like. It is important to note that the residents will have to walk these steps given; a) there is no other option to reach Dee Why Town Centre on foot that is of a reasonable distance and, b) the limited number of parking spaces on the site (i.e. less spaces than the number of rooms or residents). Walking down the steps, while obviously easier, is still a difficult task for someone who is not in good physical health or who has an impairment.

Requiring the boarding house residents to walk this path, likely on a daily basis and often multiple times during the day/night, is considered to be an unreasonable imposition. These steps are therefore not considered to be an appropriate or reasonable means of access for a boarding house and because of this, the means of access from this site to the nearest shops, transport options and services is considered to be unsuitable for the proposed development.

This has been included as a reason for refusal.

- **Compliance with the Warringah Local Environmental Plan 2011**

The submissions raised concerns that the proposal does not comply with the WLEP 2011, in particular with the aims of the LEP and with the height of buildings development standard.

Comment:

The development's compliance with the WLEP 2011 is discussed in detail, below in this report. In summary, the proposal meets the aims of the WLEP 2011 and the objectives of the R2 Low Density Residential zone. The proposal is also fully compliant with the 8.5m height limit, reaching a maximum of 7.34m.

These matters do not warrant the refusal of the application.

- **Amenity - Privacy, noise and overshadowing**

The submissions raised concerns that the proposal will result in unreasonable privacy, noise and overshadowing impacts.

Comment:

Privacy

Privacy is discussed in extensive detail under Part D8 Privacy, below in this report. In summary, the proposal does not result in any unreasonable privacy impacts to properties to the north, south or west. To the east, The eastern elevation of the boarding house contains five boarding rooms on the lower level, and two boarding rooms and the managers apartment on the upper level. The two boarding rooms and the bedroom of the managers apartment, open out onto small terraces that face east (i.e. towards Nos 33, 31 and 29 Burne Avenue) and cause potential privacy impacts.

The first floor east facing terraces have been provided with 1.0m high, 500mm wide planter boxes, positioned at the eastern edge of the terraces. These planter boxes will contain Flannel Flowers (that grow to 0.5-1.5m in height) and Spiny Mat Rush (1-1.5m). Given the soil volume in the boxes, these plants are expected to grow to at least 300-400mm in height. The plants are native and require relatively minimal maintenance and watering.

The planter boxes on the first floor terraces will provide a minimum 1.3-1.4m high screen, and, being 500mm wide, will not allow a person to stand at the edge of the terrace. This design directs views out over the top of the neighbouring dwellings and greatly minimises the ability to look down into any areas of private open space. However, given that these terraces face the rear boundaries of the adjoining properties (which contain some areas of private open space and windows into the rear of the dwellings), privacy is of particular concern and the consent authority should be satisfied that the design will result in no unreasonable impacts, rather than the design just minimising any impacts.

In this regard, it is recommended that the planter boxes be increased in height to 1.2m. This will mean that even 300mm high plants (noting that the plants can grow to between 0.5-1.5m) within the boxes, will provide a screen a minimum of 1.5m high while still preventing the viewer from standing at the edge of the terrace.

In this regard, conditions can be included in the consent, should this application be approved, requiring the planter boxes to be increased to 1.2m in height and for the Boarding House Management Plan to be amended to ensure the plants within these boxes are maintained.

Noise

Noise is discussed in detail under Part D8 Privacy, below in this report. In summary, the boarding rooms will be occupied by one or two people. Some of the rooms include small terraces or decks, however, these are not large enough to comfortably hold more than 2 people.

The common room and common outdoor area are located in the north west corner of the development. This location is adjacent to the shared driveway and well away from the neighbouring dwellings to the south and east. The nearest dwelling to the west is 12.7m away. The common outdoor area is approximately 18m^2 and therefore cannot comfortably hold a large group of people.

Conditions could be included in the consent, should this application be approved, requiring; a) the Boarding House Manager to monitor noise from the common spaces, b) the use of the outdoor space to cease at 10pm, and c) for the Boarding House Management Plan to include a complaints process should any nearby resident be impacted by noise.

Overall, the siting and design of the proposal, along with the imposition of conditions of consent, will provide a high level of acoustic privacy for occupants and neighbours.

Overshadowing

The orientation of the site and the setbacks of the proposal will mean that all neighbouring properties will retain more than three hours of sunlight between 9am and 3pm in mid winter.

These matters, subject to conditions, do not warrant the refusal of the application.

- **Built form - Building height, side setbacks, number of storeys, bulk and scale**

The submissions raised concerns that the development does not comply with a number of built form controls and that it results in a bulk and scale that is unacceptable.

Comment:

The built form control table, below in this report, shows that the only non-compliances with any built form controls are the side setback of the bin structure (the boarding house itself is set back a minimum of 2.775m, well over the 900mm minimum) and the rear setback of the external exit stairs.

These non-compliances have been discussed in detail and it has been found that they do not result in any unreasonable impacts to any surrounding properties.

The assessment has also found that the more than compliant height and side setbacks of the boarding house building, and the compliant front setback and side envelope, result in a building bulk that is not unreasonable.

These matters do not warrant the refusal of the application.

- **Room sizes**

The submissions raised concerns that the boarding room sizes are too small.

Comment:

The WLEP 2011 does not have minimum requirements for room sizes. The SEPP ARH does

have these standards, however, it does not apply to this proposal. Notwithstanding, all proposed rooms, with the exception of Room 9, are between 16m^2 and 23.2m^2 and can therefore cater for two lodgers each. Room 9 is 13m2 and is only suitable for one lodger. The SEPP ARH requires a minimum of 16m^2 for double rooms and 12m^2 for single rooms. The proposal meets these particular standards.

This matter does not warrant the refusal of the application.

- **Retention of trees**

The submissions raised concerns that the proposal did not retain sufficient vegetation on the site.

Comment:

The proposal does retain a number of existing established trees at the rear of the property. In addition, the proposed landscape plan will introduce a suitable range of native species around the site. This has been reviewed by Council's Landscape Officer who has raised no objections, subject to conditions.

This matter does not warrant the refusal of the application.

- **Landslip and slope stability**

The submissions raised concerns that the proposal would result in geotechnical issues and landslip risk for the properties to the east.

Comment:

The applicant submitted a geotechnical report with the original application and had it reviewed when the plans were amended. The geotechnical engineer raised no concerns that would mean the application should be refused, subject to compliance with the recommendations within the report.

Overall, the excavation is taking place a minimum of 2.87m away from the eastern side boundary and, given the geotechnical reports, is not expected to result in any impacts to the neighbouring properties.

Notwithstanding, conditions could be placed on the consent, should this application be approved, requiring dilapidation reports for all neighbouring properties.

This matter does not warrant the refusal of the application.

- **Impacts on power lines from new planting**

The submissions raised concerns that the planting along the western boundary would grow up into the power lines that run along the shared right of way.

Comment:

It is agreed that the proposed planting along the western boundary could grow to cause issues with the power lines. In this regard, it is recommended that a condition be included in the consent, should this application be approved, requiring the landscape plan to be amended to

remove any species along the western boundary that could grow to the height of the power lines and replace them with native species that will not grow to the height of the power lines.

This matter does not warrant the refusal of the application.

- **Quality of the plans and documentation**

  The submissions raised concerns that the quality of the plans and documentation was not sufficient and that the amended plans were not accompanied by a new Statement of Environmental Effects.

  Comment:

  The plans and documentation submitted with the original application, as well as the amended plans, are of a high quality and enabled Council to conduct a full assessment of the proposal.

  The amended plans only reduced the impacts from the development and did not require a new Statement of Environmental Effects.

  This matter does not warrant the refusal of the application.

- **Side boundary fence**

  The submissions raised concerns that no side boundary fences are included in the proposal.

  Comment:

  Side and rear boundary fences are a matter for the owners who share the boundary to agree on. It is not appropriate for Council to enforce a boundary fence to be built or replaced without the agreement of all the owners who share it.

  This matter does not warrant the refusal of the application.

- **Accessibility and disability discrimination**

  Specific comments included:

  "*The architectural plans for DA 2018/0304 do not appear to show any provision for a pedestrian accessway/ramp to the front entrance of the building that is separate from the driveway. Specifically, on the northwest corner of the subject site there is no clear delineation between the driveway and the pedestrian access to the front door of the premises (see the sections of plans below)*."

  "*Access to (and around) the shared outdoor area does not appear to be compliant with Access Code; Disability (Access to Premises – Buildings) Standards 2010. There is a significant cross-fall (~ 4m) at the rear of the site.*"

  Comment:

  It is important to note that the information required to be submitted at development application stage is different to the information required at Construction Certificate stage.

The application was referred to Council's Building Certification team who commented:

"*An overview of the proposal indicates that compliance with the BCA and Access requirements can be achieved with detail being provided at the Construction Certificate stage*."

Appropriate conditions can be included in the consent, should this application be approved, requiring compliance with the BCA, all relevant Australian Standards and other legislation such as the *Disability Discrimination Act 1992*.

This matter does not warrant the refusal of the application.

- **Fire safety**

Specific comments included:

"*Other than the main entrance to the building, there are actually no exits or horizontal paths of egress leading directly from the premises to the street front. In the event of a fire, and/or the lift is inoperable, how is someone who is unable to use stairs able to exit the premises to the road front, from the basement, for example? Surely a horizontal pedestrian exit from the basement carpark is required? How does this meet building code for Fire Safety and Egress?*"

Comment:

As above, the information required to be submitted at development application stage is different to the information required at construction certificate stage.

The application was referred to Council's Building Certification team who commented:

"*An overview of the proposal indicates that compliance with the BCA and Access requirements can be achieved with detail being provided at the Construction Certificate stage*."

Appropriate conditions can be included in the consent, should this application be approved, requiring compliance with the BCA and all relevant Australian Standards, including those relating to fire safety.

This matter does not warrant the refusal of the application.

- **Waste management**

The submissions raised concerns that the proposal would result in an increase in garbage bins on the street needing to be collected and issues for garbage trucks manoeuvring in the cul-de-sac.

Comment:

The proposal will result in less bins sitting on the kerb because the bins will be wheeled in and out from the storage area by Council's contractors. This will result in an improvement to the streetscape on collection days.

If garbage trucks can currently manoeuvre in the street and cars do not part illegally, then the proposal will not impact on the ability for garbage collection to occur.

This matter does not warrant the refusal of the application.

- **Property values**

  The submissions raised concerns that the proposal would impact on property values in the area.

  Comment:

  Property value is not a relevant consideration under the provisions of Section 4.15 of the EP&A Act 1979.

  This matter does not warrant the refusal of the application.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application proposes the demolition of the existing dwelling and the erection of a boarding house containing three storeys, (including a part underground car park with accommodation for 6 car spaces and 4 bicycle spaces, storage etc), that comprises 15 rooms, a manager's quarters, common room, common area deck, and private open space area/s. An overview of the proposal indicates that compliance with the BCA and Access requirements can be achieved with detail being provided at the Construction Certificate stage. Accordingly there are no objections to the proposal subject to conditions.
Environmental Health (Industrial)	**Original comments:** Dated 9/9/2018

Is the proposal for an industrial use?	YES Boarding House
Was sufficient documentation provided appropriate for referral?	NO
Are the reports undertaken by a suitably qualified consultant?	NO
Have you reviewed the Statement of Environmental Effects, and consider ongoing use, such as: - Processes with emphasis on potential pollution (air, noise, water and land) - Hazardous Materials, liquids stored on site - Waste storage, disposal. - Mechanical ventilation	YES
Have you Consider impact of noise, hours of operation, location to nearest residential, location of equipment, times of deliveries, noise	YES

Internal Referral Body	Comments	
	management plans, acoustic reports etc.	
	If the proposal is a scheduled premises have you recommended that the DAO refer the proposal to OEH?	N/A
	General Comments The proposal is for a two storey boarding house with 15 x studio apartments and 1 x 1 bedroom managers apartment. Two of the ground floor apartments are accessible for persons with disabilities pursuant to the Building Code of Australia. The application does not refer to the boarding house as being for use by residents who are persons with *additional needs* and therefore the application has been assessed as a general boarding house (not an *assisted* boarding house for use by residents who are persons with *additional needs* pursuant to the Boarding Houses Act, 2012). The Environmental Health assessment has considered the following legislation: (i) Public Health Regulation 2012 (Part 7, Division 3, Clause 46 - Sleeping accommodation). (ii) Local Government (General) Regulation 2005, Part 3, Division 1, Clause 83 - Relevant standards for certain places of shared accommodation plus Schedule 2, Standards enforceable by orders, Part 1 - Standards for places of shared accommodation). (iv) State Environmental Planning Policy (Affordable Rental Housing) 2009, Part 2, Division 3, Clause 29 - Standards that cannot be used to refuse consent plus Clause 30 - Standards for boarding houses. (vi) Boarding Houses Act 2012 and Boarding Houses Regulation 2013. **Facilities:** Each of the 15 studio boarding house rooms are provided with a double bowl sink and a fridge however no cooking facilities are nominated with the rooms. A communal kitchen area (with cooking facilities shown) is provided on the ground floor of the boarding house however the provision of mechanical ventilation to the communal kitchen area has not been addressed. Considering that this is the only place that any of the 15 room boarding house lodgers can cook (during their potential more than 3 month long-term sleeping accommodation stay) then it is considered that a mechanical ventilation and exhaust system be incorporated into the design with appropriate capacity for use within the communal kitchen area. Sectional and elevation plans are required to be provided for assessment. Each of the lodger rooms is provided with a washing machine within the bathroom. An external communal clothes line is provided at the rear of the premises. The communal kitchen area is the only place that any of the 15 room	

Internal Referral Body	Comments
	boarding house lodgers will be able to cook (during their potential 3 month long-term sleeping accommodation stay). It is considered appropriate that adequate room design, sizes and layout be provided to accommodate the cumulative use of the single room that has been nominated for use as the communal kitchen, food preparation, storage and washing up area, communal dining and internal communal recreation area. There is no requirement for the premises to be registered as a food premises as the boarding house will not be providing food for sale and will not be used as an *assisted* boarding house. **Accommodation:** The application documents submitted for assessment advise that there will be a single lodger in each room however they also advise that the lodger rooms can accommodate 2 adult persons. The floor plans also show each lodger room containing a double bed with two head rests and two side tables. For the purpose of sleeping accommodation numbers and room size calculations it is requested that the applicant provide information to confirm the actual numbers of persons to be accommodated and room size calculations in each of the individual rooms. The information will need to evidence compliance of the size of each lodger room with the State Environmental Planning Policy (Affordable Rental Housing) 2009, clause 29 *Standards that cannot be used to refuse consent* relating to accommodation size. Clause (f) states that: each boarding room is to have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least: (i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or (ii) 16 square metres in any other case. **Noise:** A number of written submissions have been received following neighbourhood notification regarding the potential for noise impacts. The Statement of Environmental Effects notes that an internal noise assessment has been conducted however the documentation has not been submitted as part of the boarding house application. It is considered that an Acoustic Assessment is required to be conducted by a suitably qualified and experienced Acoustic Engineer. The Acoustic Assessment is to consider the impact of likely internal and external noise sources (including persons and structures/mechanical plant/equipment) and receivers of potential noise including neighbouring residential premises. The acoustic assessment is to include reference to the use of the external balconies to each boarding house room plus the proposed rear elevated outdoor deck that is intended for use as a common area. The Acoustic Assessment is to incorporate recommendations including any treatment measures to be imposed for the benefit of neighbourhood and lodger amenity in accordance with NSW EPA

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	guidelines. **Acid Sulphate Soils:** SEA mapping shows that the premises subject to the boarding house application at 22 Redman Road, Dee Why, is not affected by Acid Sulphate Soils.
	Recommendation The application is unable to be supported to due to various aspects of insufficient information and also in response to neighbouring submissions regarding potential noise impacts. — REFUSAL
	NEW INFORMATION TO HAND - ADDITION REVIEW 20.11.2018 This matter has been referred back to Environmental Health for reassessment as it appears that additional amended plans(only) have been submitted. The officer who carried out the initial assessment is not available to carry out this assessment and there are some 214 documents to be reviewed; however it would appear that the only outstanding item now with regards to Environmental Health is an acoustic review . It is noted that the common area has been moved away from lower properties to the western Boundary which abuts an access driveway, however with the potential intense use of the common area by many occupiers there is concern with regards to noise generated seven days a week particularly at night with, at this stage ,uncontrolled hours of use. Common areas can be a source of noise nuisance. With a development of this type of use is not uncommon for Environmental Health require an acoustic assessment report(already mentioned in the previous referral) which will normally also recommend hours of use and management of the common area to reduce potential nuisance to residential receivers. If there is management of noise information on file it has not been discoverable to date. Any acoustic review of the common area being carried out and should also include any mechanical devices such as air conditioning, exhaust fans including that from the car park, mechanical roller door to garage area and the like. Assessment should include internal and external receivers. Therefore councils Environmental Health Team recommends refusal until such information is to hand to enable a full assessment of noise implications. Other matters can be dealt with by conditions of approval at that time . RECOMMENDATION : Refusal

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	Planners comment: At the time of writing, no Acoustic Report has been received, however, the applicant is in the process of obtaining one. Should this report state that the use is acceptable and provide recommendations to minimise its impact, these recommendations would form part of conditions of consent should this application be approved.
Landscape Officer	**Amended Landscape Plans Comment 19/09/2018** Amendments to the Landscape Plan are noted. The amendments are generally in accordance with the suggested amendments outlined below. The commercial availability of *Eucalyptus oblonga* is questionable, however the intent and size of proposed planting is supported in relation to amelioration of building bulk and scale and integration into the local character. Recommended conditions have been included if the proposal is to be approved. **Amended Plans Comment 06/09/2018** The proposed landscape plan is not considered adequate to provide for a soft landscape setting in keeping with the local residential character. The plans rely predominately on hedges around the perimeter of the site. The main nominated species around the perimeter of the site is indicated to be *Acmena smithii* 'Hot Flush'. This is a relatively small species, generally no exceeding 3m in height. As the information provided indicates that the hedges are to be maintained at 3.5 - 4 metres, this species is not considered adequate to meet the stated requirement . The plans indicate that at least 6 trees on the site are to be removed with some *Callistemon* sp. of very poor quality to remain at the rear of the site. The landscape plan indicates replanting of 2 canopy trees, which is considered insufficient in terms tree canopy replacement and maintaining existing character. The landscape plan should provide for a range of trees of varying heights planted within garden beds containing shrubs of varying heights with ground-covers below, providing a landscape setting more in keeping with the residential character of the area.. Additionally a layering of planting heights will more effectively soften the bulk and scale of the building and reduce issues of overlooking surrounding properties. A rough sketch is provided below indicating how a more suitable landscape outcome could be achieved which reduces proposed lawn

Internal Referral Body	Comments
	areas of little value and provides deeper garden beds to accommodate trees, shrubs and ground-covers across the site. **<u>Original Comment</u>** The proposal raises some concerns regarding the streetscape address and landscape setting. 1. Streetscape. The provision of 2 parking bays in the front setback reduces the opportunity for soft landscape to integrate the proposal into the streetscape. When coupled with the extent of driveway traversing the front of the site, significant areas of hardstand would be provided. The 2 parking bays in the front setback are not supported in consideration of Clause 30 A – Character of Local Area of SEPP Affordable Rental Housing 2009 and WDCP Cl B7 Front Boundary Setbacks and the R2 Zone Objectives. 2. Landscape setting. The drawings indicate soft landscape along the western side of the site adjacent to the building. However covered terraces are indicated above these areas. Consequently these areas should not be considered as soft landscape as they are unlikely to be sustainable and are not consistent with WDCP D1 Landscaped Open Space and Bushland Setting - Requirements 1 a), which specifically excludes roofed areas from calculations. The proposed landscaping is not considered adequate to address the significant visual impact of the development along the eastern elevation. As the site is elevated above development to the east, consideration of building bulk and scale from the eastern side is relevant. Additional articulation and setback to reduce building bulk and provide for additional taller landscape treatments may assist in integrating the development into the site and reduce visual impact to be consistent with the Objectives of WDCP B5 Side Boundary Setbacks, D1 Landscaped Open Space and Bushland Setting and the R2 Zone Objectives. At this stage, the proposal is not supported with regard to landscape issues. Cl 30A of SEPP (Affordable rental Housing) 2009 30A Character of local area A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area. Zone R2 Low Density Residential 1 Objectives of zone • To provide for the housing needs of the community within a low density residential environment.

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	• To enable other land uses that provide facilities or services to meet the day to day needs of residents. • To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah. WDCP Cl B7 Front Boundary Setbacks Objectives • To create a sense of openness. • To maintain the visual continuity and pattern of buildings and landscape elements. • To protect and enhance the visual quality of streetscapes and public spaces. • To achieve reasonable view sharing. Requirements Development is to maintain a minimum setback to road frontages. The front boundary setback area is to be landscaped and generally free of any structures, basements, carparking or site facilities other than driveways, letter boxes, garbage storage areas and fences. WDCP Cl B5 Side Boundary Setbacks Applies to Land This control applies to land shown coloured on the DCP Map Side Boundary Setbacks, with the exception of land identified as 'Merit Assessment'. Objectives • To provide opportunities for deep soil landscape areas. • To ensure that development does not become visually dominant. • To ensure that the scale and bulk of buildings is minimised. • To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained. • To provide reasonable sharing of views to and from public and private properties. Requirements Development on land shown coloured on the DCP Map Side Boundary Setbacks is to maintain a minimum setback from side boundaries as shown on the map. Side boundary setback areas are to be landscaped and free of any above or below ground structures, car parking or site facilities other than driveways and fences. On land within the R3 Medium Density Residential zone, above and below ground structures and private open space, basement car parking, vehicle access ramps, balconies, terraces, and the like shall not encroach the side setback except as provided for under Exceptions below. D1 Landscaped Open Space and Bushland Setting Applies to Land This control applies to land shown on DCP Map Landscaped Open Space and Bushland Setting.

Internal Referral Body	Comments
	Objectives • To enable planting to maintain and enhance the streetscape. • To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife. • To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building. • To enhance privacy between buildings. • To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants. • To provide space for service functions, including clothes drying. • To facilitate water management, including on-site detention and infiltration of stormwater.
NECC (Development Engineering)	The stormwater management for the proposed development and access is generally in compliance with Council's Technical specification. No Development Engineering objections is raised to the proposed development subject to conditions.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The site is located outside the adopted Flood Planning Area. No residential flood related development controls applied.
Strategic and Place Planning (Heritage Officer)	**Discussion of reason for referral** This application has been referred as it is within the vicinity of a listed heritage item, being Item I51 House - 41 Redman Road, Dee Why, which is listed in Schedule 5 of WLEP 2011. The subject site is located 45 metres from the heritage item, on the other side of Redman Road. **Details of heritage items affected** Details of the heritage item in the vicinity, as contained within the Warringah Heritage inventory are: **Item I51 House known as "Elouera" - 41 Redman Road, Dee Why** **Statement of Signifcance** A good representative example of a brick federation bungalow. Displays high integrity with much original fabric.Historically provides evidence of the location & character of early development in the area. **Physical Description** Substantial single storey face brick dwelling. Low pitched multi-gabled roof of terracotta tiles, capping & finials. Timber shingles and half timbering to gable end. Deep verandah at front under tiled skillion roof. brick piers & timber columns. Tall brick chimney. French doors to front verandah. Modifications include timber balustrade to verandah & front fence.

Internal Referral Body	Comments
	Other relevant heritage listings Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 - No Australian Heritage Register - No NSW State Heritage Register - No National Trust of Aust (NSW) Register - No RAIA Register of 20th Century Buildings of Significance - No Other - No **Consideration of Application** This application proposes demolition works and the construction of a boarding houses with 15 rooms. The development is 2 storeys above underground parking, so will present as largely a two storey development in the streetscape. The heritage listed house is located 45 metres west along Redman Road, and on the northern side of the road. Given the visual separation between the two properties, this proposal will not have any impact upon the significance of the heritage listed house located at 41 Redman Road. Therefore, no objections are raised on heritage grounds. **Consider against the provisions of CL5.10 of WLEP** Is a Conservation Management Plan (CMP) Required? - No Has a CMP been provided? - N/A Is a Heritage Impact Statement required? - No Has a Heritage Impact Statement been provided? - N/A
Strategic and Place Planning (Urban Design)	**URBAN DESIGN COMMENTS 11.09.2018** The proposal in its revised form can be supported with the following items to be addressed in the design; **Amenity/Visual Overlooking** The planter box treatment and species selection on the upper level balconies is supported. However there remains the potential for overlooking and privacy issues that can be readily addressed. A thorough analysis of view lines to and from neighbouring properties, particularly to the east and west elevations to ensure any remaining privacy issues are addressed is recommended. The addition of sliding/operable privacy screening from the level of the top rail of the balustrade to the underside of the ceiling soffit, similar to that used on the western elevation is recommended for the upper level units with balconies on the eastern elevation. Units with no balconies but windows potentially exposed to privacy issues should also apply a screening device to the windows and doors; common room, unscreened windows and doors on the western elevation, unscreened windows and doors on the eastern elevation, upper an lower levels.

Internal Referral Body	Comments
	Consideration to the requirements for solar access and cross ventilation should also be addressed when selecting the privacy screen treatment; louvres, perforated metal or other so as to relate contextually and conceptually to the overall design of the built form. END **PREVIOUS RESUBMISSION COMMENTS** The proposal in its REVISED form cannot be supported for the following reasons: **1. Built Form Controls:** *WLEP 2011* *Aims of the LEP in relation to residential development, are to:* *i. protect and enhance the residential use and amenity of existing residential environments, and* *ii. promote development that is compatible with neighbouring development in terms of bulk, scale and appearance, and* *iii. increase the availability and variety of dwellings to enable population growth without having adverse effects on the character and amenity of Warringah.* RESPONSE <u>PREVIOUS COMMENTS</u> External facing balconies on the eastern side boundary present privacy issues with the orientation of private deck spaces directly overlooking the rear private yards of 29, 31 and 33 Burne Avenue. The use of privacy screening on this elevation is suggested. <u>RESUBMISSION COMMENTS</u> The planter boxes assist with a level of privacy screening to the lower level balconies however the upper portion of the lower level balconies facing east still present privacy/overlooking issues with the neighbouring properties. The upper storey balconies have not adequately addressed the privacy overlooking issues previously raised. Previous comments advised the requirement for screening. This will still be required to be addressed. The use of the expanded galvanised steel expanded mesh for the balustrades could work at the ground level where plantings will soften the presence of the steel balustrade treatment. However for the upper storey balustrades this could present as quite institutional and less residential. If planting on the upper level balustrades screens is possible this could reduce the effect. Otherwise a more residential material application to the balustrades is recommended.

Internal Referral Body	Comments
	2. WDCP 2011 *B5 – Side Boundary Setbacks* *Objectives* *• To provide opportunities for deep soil landscape areas.* *• To ensure that development does not become visually dominant.* *• To ensure that the scale and bulk of buildings is minimised.* *• To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.* *• To provide reasonable sharing of views to and from public and private properties.* RESPONSE The Common Outdoor area is located within the side setback zone. The common outdoor space is considered an elevated built form encroachment within the side setback on the western boundary. Revised drawings showing compliance with the side setback control is required. *B9 – Rear Boundary Setbacks* *1. Development is to maintain a minimum setback to rear boundaries.* *2. The rear setback area is to be landscaped and free of any above or below ground structures* RESPONSE The egress stair to the rear of the property is within the rear setback. Revised drawings showing compliance with the rear setback control is required. Internalising the circulation back into the building to delete the built structure in the setback could see the proposal compliant with the control. **PREVIOUS REFERRAL COMMENTS** The proposal in its current form cannot be supported for the following reasons: **1. SEPP Affordable Rental Housing 2009** **Clause 29(2) Wall Height Maximum Storeys and Rear Setbacks** The following controls under the Affordable Rental Housing SEPP are not achieved; a. Maximum wall height – 7.2m b. Rear setbacks – 6m Wall heights exceed 7.2 metres in several locations on north eastern and south eastern zones of the building. The proposed plans show elevated deck structures and stair structures encroaching the 6m rear setback zone. **Clause 30 A – Character of Local Area** The proposal is not compatible with the character development in the

Internal Referral Body	Comments
	current local context. The proposal needs to be compatible with the architectural form and style of the established development character. The proposal will have unacceptable impacts on the amenity of neighbouring properties. The impacts described above can be minimised with modulation and articulation of building form in a well-considered landscape setting. This applies particularly to the side boundaries where the setback and built form present an overbearing elevation to the neighbouring properties. **Clause 30 (1) (a) – Communal Room** Consideration of the cumulative uses imposed on the Common room facility should be taken into account; - Inadequate cooking facilities to cater for all residents in one common room - Only one stove top provided in the common room for the whole facility. **2. WLEP 2011 - Built Form Controls:** Aims of the LEP in relation to residential development, are to: *i. protect and enhance the residential use and amenity of existing residential environments, and* *ii. promote development that is compatible with neighbouring development in terms of bulk, scale and appearance, and* *iii. increase the availability and variety of dwellings to enable population growth without having adverse effects on the character and amenity of Warringah.* The aims of the zone, to ensure residential environments are in harmony with the surrounding single and double storey houses, have not been achieved. The proposed continuous linear form of the eastern side boundary in particular needs to be broken up into similar bulk and relief to the neighbouring houses. Suggest that the manager's apartment including master bedroom, and beds 7 & 8 directly above are set back 3m from the side boundary to provide relief and articulation on the eastern elevation. External facing balconies on the eastern side boundary present privacy issues with the orientation of private deck spaces directly overlooking the rear private yards of 29, 31 and 33 Burne Avenue. The use of privacy screening on this elevation is suggested. **3. WDCP 2011** **B1 – Wall Heights** *Walls are not to exceed 7.2 metres from ground level (existing to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas wholly located within a roofspace).* See point 1. SEPP above.

Internal Referral Body	Comments
	B3 – Side Boundary Envelope *Buildings on land shown coloured on the DCP Map Side Boundary Envelopes must be sited within a building envelope determined by projecting planes at 45 degrees from a height above ground level (existing) at the side boundaries of: 4 metres* Eaves, Roof and balcony of the proposal on the eastern side encroach the allowable building envelope **B5 – Side Boundary Setbacks** Objectives • *To provide opportunities for deep soil landscape areas.* • *To ensure that development does not become visually dominant.* • *To ensure that the scale and bulk of buildings is minimised.* • *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.* • *To provide reasonable sharing of views to and from public and private properties.* See point 2. Built Form Controls. **B9 – Rear Boundary Setbacks** *1. Development is to maintain a minimum setback to rear boundaries.* *2. The rear setback area is to be landscaped and free of any above or below ground structures* See comment above 1. SEPP Rear Setbacks **D1 Landscaped open space – Site Coverage/Landscaped Areas** 36.6% landscaped area proposed. Required percentage of landscaped area has not been achieved (40%). Shortage of Landscaped open space can be achieved with setback suggested in comments above. See point 2. Built Form Controls.
Traffic Engineer	The applicant has reduced the number of dwellings to enable a compliant car parking arrangement. The concerns around the car parking layout can be resolved via conditions. Traffic Team raises no objection to the proposal subject to conditions. **Previous Comments** Note there are no alterations to the unit numbers. Therefore there is no change in the anticipated traffic generation of the site. Hence the previous comments are still valid. As such, the Traffic Team raises no objection. Regarding the deficit in parking of 1 car space brought on by the

Internal Referral Body	Comments
	change to the SEPP requirements. It is acknowledged that the original submission was compliant and the change to policy has caused non compliance. The applicant has identified that, to address the non-compliance is unfeasible. Preliminary review of the car parking layout would suggest that the current configuration is not in accordance with AS 2890.1:2004. Clearances at blind aisles are not sufficient, nor is the aisle width for the 'User class'. It is noted that the required changes may alter the parking layout even further causing a greater shortfall in parking provisions. Based on the above, Council's Traffic Team cannot support the application in its current form. **Previous Comments - 29/05/18** The proposal is for demolition of an existing house and construction a 15 room boarding house. The parking requirements for boarding house is 1 car parking spaces per 5 rooms as well as a bicycle spaces and a motorcycle spaces per 5 rooms. The proposed boarding house provides adequate car parking spaces and bicycle spaces, but does not provide any motorcycle spaces. The provision of 3 motorcycle spaces is required. The disable parking space and associated shared area on the ground floor shall be designed in compliance with Australian Standards AS2890.6:2009. The additional traffic generating by the proposal does not considered to have significant implication the road network , The responsible planning officer should consider the lack of separated pedestrian access from the driveway. In view of the above, no objection is raised on the proposal subject to condition.
Waste Officer	**Waste Services Referral** The proposal is not acceptable for the below reasons **Bin room design and location** The 13 x 240L bins must be located in 1 location and accessible to Council at all times. The path between bin room and property boundary must be 1 solid path. **Bulk waste room design and location** Unable to identify on the plan where the applicant has designed and located the bulk waste store room. The room must be enclosed and have it's own separate access and not be shared with other facilities. The bulk waste room must be located adjacent to the bin room.

Internal Referral Body	Comments
	Planners comment: The plans have since been amended to accommodate all the bins in one location and accessible to Council. These bins are accessible via a path to the property boundary. The basement contains additional space that can be used for bulky goods storage.

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 (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

SEPP ARH v WLEP 2011

As the site is not within an "Accessible Area", the applicant amended the application post lodgement to rely upon the provisions of the Warringah Local Environmental Plan 2011 and Warringah Development Control Plan 2011 in the assessment of the application. Notwithstanding, as the SEPP contains specific provisions for boarding houses which are still relevant to assessing the merits of the application, those provisions are considered below.

Division 3: Boarding houses

Clause 25: Definition

For the purposes of this Division, the Standard Instrument defines a 'boarding house' as a building that:

"(a) is wholly or partly let in lodgings, and
(b) provides lodgers with a principal place of residence for 3 months or more, and
(c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and
(d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,

but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment".

In this Division 'communal living room' means "*a room within a boarding house or on site that is available to all lodgers for recreational purposes, such as a lounge room, dining room, recreation room or games room*".

Clause 26: Land to which this Division applies

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone B1 Neighbourhood Centre, or (f) Zone B2 Local Centre, or (g) Zone B4 Mixed Use.	**Consistent** The site is located within the R2 Low Density Residential zone and, as such, the proposed use is permissible with consent under WLEP 2011.

Clause 27: Development to which this Division applies

(1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.

Requirement	Comment
(2) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area. **Note:** ***Accessible area*** means land that is within:	The site is located with the R2 Low Density Residential zone and is situated **more than** 400m walking distance of a bus stop used by a regular bus service. In this regard, this division (i.e. Division 3: Boarding houses) does not apply to this site or this development.

(c) 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.	Notwithstanding, the proposal will be assessed against the standards within this division in order to assist in determining the reasonableness of the development.
(3) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.	Not applicable. The site is located within the Sydney region.

Clause 28: Development may be carried out with consent

Requirement	Comment
Development to which this Division applies may be carried out with consent.	The development constitutes the construction of a boarding house, as defined by the Standard Instrument. As discussed above, the development may not be considered under this Division of the SEPP as the development is not in an 'accessible area'.

Clause 29: Standards that cannot be used to refuse consent

Standard	Requirement	Proposed	Compliant/Comment
(1) Density and scale A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:	(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or	Floor space ratios are not applied in WLEP 2011 or WDCP	Not applicable
	(b) if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land, or	Floor space ratios are not applied in WLEP 2011 or WDCP	Not applicable
	(c) if the development is on land within a zone in which residential flat	The R2 Low Density Residential zone does not permit residential flat	Not applicable

	buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register - the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus: (i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or (ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.	buildings and no FSR applies to the land.	
(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:			
(a) building height	if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,	The proposal is a maximum of 7.34m in height. The control in WLEP 2011 sets a maximum height of 8.5m.	**Complies**
(b) landscaped area	if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,	The existing site contains a similar shaped driveway and the surrounding sites contain a mixed range of landscaping and paving (i.e. driveways and paths). The majority of surrounding properties have open, mostly landscaped, front yards. The proposed front setback area of contains some large areas of landscaping, the driveway, pedestrian	**Complies**

		paths and a bin storage structure. The landscaping includes a strip mostly 2.0m wide that screens parts of the driveway from the street. The slope of the site means that the driveway takes up a large portion of the front yard (as it currently does on the site). However, the location and size of the landscaped areas and the chosen plant species will mean that, overall, the landscape treatment of the front setback area will be compatible with the streetscape.	
(c) solar access	where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,	The indoor common room will received more than 3 hours direct sunlight between 9am and 3pm in mid-winter.	**Complies**
(d) private open space	if at least the following private open space areas are provided (other than the front setback area): (i) one area of at least 20m² with a minimum dimension of 3.0m is provided for the use of the lodgers, (ii) if accommodation is provided on site for a boarding house manager—one area of at least 8.0m² with a minimum dimension of 2.5m is provided	The proposal includes: An 18m^2 area of outdoor private open space directly adjoining the common room, plus the rear yard, at approximately 140m^2. These spaces are for the use of the lodgers. The deck has a minimum dimension of 2.8m and the rear yard of 4.83m. A private deck of approximately 13m^2 for the use of the manager. This deck has a	**Complies**

	adjacent to that accommodation,	minimum dimension of 2.5m.	
(e) parking	if: (i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and (ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and (iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and (iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,	**Requirements** The proposal is development not carried out by or on behalf of a social housing provider and therefore requires at least 0.5 parking spaces for each boarding room. The proposal must also provide 1 space for the manager. **Rooms proposed** 14 boarding rooms and 1 managers apartment are proposed, requiring 7 parking spaces for the rooms and 1 for the manager. **Parking spaces proposed** 8 car parking spaces are proposed including 1 managers space and 1 disabled space.	**Complies** This matter is discussed in detail under Part C3 Parking Facilities, in the Warringah DCP section of this report. The 0.5 spaces per room rate has been used as a comparison rate for this proposal, given the SEPP ARH does not apply.
(f) accommodation size	if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least: (i) 12 square metres in the case of a boarding	All proposed rooms (subject to the exclusions), with the exception of Room 9, are between 16m^2 and 23.2m^2. and can therefore cater for two lodgers each. Room 9 is 13m^2 and is	**Complies** A condition is recommended to ensure Room 9 is only a single room.

	room intended to be used by a single lodger, or (ii) 16 square metres in any other case.	only suitable for one lodger.	
	(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	All rooms contain kitchen and bathroom facilities.	**Complies**
	(4) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).	N/A	The proposal is fully compliant with all standards set out in subclause (1) or (2).

Clause 30: Standards for boarding houses

Standard requirement	Proposed	Compliant/Comment
(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:		
(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	One communal room has been provided.	Complies
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m²,	The maximum floor area of any room is 23.2m^2.	Complies
(c) no boarding room will be occupied by more than 2 adult lodgers,	A condition of consent is recommended to ensure this.	Complies
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	Adequate bathroom and kitchen facilities are available within each room.	Complies
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house	An on site dwelling has been provided for a boarding house manager.	Complies

manager,		
(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,	The land is not zoned primarily for commercial purposes.	Not applicable
(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.	The proposal requires three bicycle and three motorcycle spaces. The proposal provides four bicycle and five motorcycle spaces.	Complies
(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.	The proposal is for a new boarding house.	Not applicable

Clause 30: Character of the local area

The matter of assessing the character compatibility of development has been examined by the Land and Environment Court in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 and *Project Venture Developments v Pittwater Council (2005)* NSWLEC 191 where Senior Commissioner Roseth set out Planning Principles to better evaluate how a development should respond to the character of its environment. The following provides an assessment against the Planning Principles established in those two cases.

In the case of *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 Senior Commissioner Roseth developed the following Planning Principles:

- ***The first principle is that buildings in a development do not have to be single-storey to be compatible with the streetscape even where most existing buildings are single storey. The principle does not apply to conservation areas where single storey dwellings are likely to be the major reason for conservation.***

Comment:

The dwellings within the local area are a mix of single and two storey. The proposal is a relatively low (under the maximum height limit), two storey structure, particularly on the western (i.e. the most visible) elevation and is therefore consistent with the first principle.

- ***The second principle is that where the size of a development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping.***

Comment:

The size of the development is not 'much greater' than the other buildings in the street. As a comparison, there are buildings that are higher (eg: No. 32 Redman Road, to the immediate west of the site), longer (eg: No. 31 Burne Avenue, to the immediate east of the site) and wider (eg: No. 32 Redman Road). There are other dwellings in the vicinity with dimensions that are only slightly smaller than the proposal.

As the building is not 'much greater' in size than the other buildings in the street, it does not necessarily need to be visually broken up. Notwithstanding, the development is well articulated in both the horizontal and vertical planes on all elevations (some elevations are more articulated than others) and uses a range of colours and materials to break up the visual bulk of the structure. Landscaping has also been skilfully used to visually screen the building.

The boarding house will appear as a large, all be it differently designed, dwelling and is therefore consistent with the second principle.

- ***The third principle is that where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.***

Comment:

The site slopes down towards the east and the building has been designed with a roof form that matches this slope, making the building appear to follow the fall of the land. In addition, the basement excavation is no wider than the footprint of the ground floor.

There are no other significant natural features on the site, some existing established trees are being retained at the rear of the site, and the proposed landscape plan will provide a planting schedule that will compliment the site and the development.

In this regard, it is considered that effective methods have been employed in the design of the development to reduce its visual dominance and the proposal is therefore consistent with the third principle.

- ***The fourth principle is that a development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can never be introduced only that their introduction should be done with care and sensitivity.***

Comment:

The colours and materials chosen for the development are relatively modern but will fit within the existing streetscape while not making the building unreasonably stand out.

In this regard, the development is considered to be consistent with the fourth principle.

The above Principals were further developed in *Project Venture Developments v Pittwater Council (2005)* NSWLEC 191 to include the following:

Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

Comment:

The physical impacts of the development on surrounding properties are assessed as consisting of constraints on the development potential of surrounding sites, privacy, overshadowing and noise.

Constraints on the development potential of surrounding sites

The proposed development is well set back from all boundaries, particularly from the sides and will therefore not constrain surrounding sites from developing in the future.

Privacy

This matter has been discussed in detail under Part D8 Privacy, in the Warringah DCP section of this report. In summary, subject to conditions requiring some addition privacy treatment, the proposal will not result in any unreasonable impacts to any neighbouring properties.

Overshadowing

The orientation of the site and the setbacks of the proposal will mean that all neighbouring properties will retain more than three hours of sunlight between 9am and 3pm in mid winter.

Noise

At the time of writing, no Acoustic Report has been received, however, the applicant is in the process of obtaining one. Should this report state that the use is acceptable and provide recommendations to minimise its impact, these recommendations would form part of conditions of consent should this application be approved.

Conclusion to Character Assessment

The above character assessment has found that, in the context of the Land and Environment Court Planning Principles, the proposal is compatible with the character of the local area and surrounding wider locality.

Conclusions on Assessment Against the SEPP

As stated earlier in this report, the SEPP ARH does not apply to the proposed development as it is not in an ***'accessible area'***. Instead, the development is being assessed in accordance with Section 4.15 of the EPA Act, 1979, under the Warringah LEP 2011 and Warringah DCP 2011.

Notwithstanding, the above assessment has found that apart from the 'accessible area' clause, the development, subject to conditions, is compliant with the requirements and standards within the SEPP ARH.

Aside from the unsatisfactory means of access which renders the site unsuitable for the proposed development, the proposal is satisfactory with respect to the other requirements of the SEPP.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate was submitted with the application (see Certificate No. 900259M dated 27 February).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	45	45

Since the lodgement of the application, the plans have been amended twice. As the current BASIX certificate may no longer be accurate, it is recommended that, should this application be approved, a condition be included in the consent requiring a new BASIX Certificate to be obtained and the recommendations within it to be incorporated into the design prior to the issue of the construction certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	8.5m	7.34m	Yes

Compliance Assessment

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

Detailed Assessment

Zone R2 Low Density Residential

The underlying objectives of the R2 Low Density Residential zone:

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

  Comment:

  The proposal will provide new housing options for members of the Northern Beaches community. The use is permissible in the zone and, whilst the development will not be consistent with single detached dwellings in the vicinity, the development will be sufficiently compatible with the low density residential environment.

  It is considered that the development satisfies this objective.

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

  Comment:

  The proposal will provide a land use that is different from the majority of the surrounding land uses. In addition, the development will not prohibit other properties from providing facilities or services to meet the day to day needs of residents.

  It is considered that the development satisfies this objective.

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

  Comment:

  The development will sit comfortably within an appropriate landscaped setting. The setbacks down both sides of the building are far greater than the 900mm minimum requirement and allow for reasonable amounts of deep soil areas to establish an appropriate landscape amenity. The rear setback area contains a relatively large single area of deep soil and the front setback area has extensive proposed planting to screen the driveway and building.

  Overall, the site will be characterised by a landscaped setting with native plants that are in harmony with the natural environment of the local area.

It is considered that the development satisfies this objective.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	Maximum of 6.34m	N/A	Yes
B3 Side Boundary Envelope	East - 4m	No encroachments	N/A	Yes
	West - 4m	No encroachments	N/A	Yes
B5 Side Boundary Setbacks	East - 0.9m	Basement - Minimum of 2.87m Ground floor - Minimum of 2.92m First floor - Minimum of 2.95m	N/A N/A N/A	Yes Yes Yes
	West - 0.9m	Basement - Minimum of 2.87m Ground floor - Minimum of 2.79m Common Outdoor Area - 0.94m Bin storage structure - nil First floor - Minimum of 2.775m	N/A N/A N/A 100% N/A	Yes Yes Yes **No** Yes
B7 Front Boundary Setbacks	North - 6.5m	Building - Minimum of 6.505m Garbage bin storage - 2.63m	N/A N/A	Yes Yes (by exception)
B9 Rear Boundary Setbacks	South - 6m	External stairs - Minimum of 4.83m Building wall - Minimum of 6.0m	19.5% N/A	**No** Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	40.1% (323.1sqm)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	No	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

Detailed Assessment

A.5 Objectives

The objectives of the Warringah Development Control Plan are:

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

  Comment:

  This assessment has found that the proposed boarding house performs well against the development standards and built form controls relevant to the site. The design of the building has a satisfactory aesthetic and has taken into consideration the characteristics of the site as

well as improving the quality of landscaping. The scale of the development and its spatial separation from surrounding buildings responds reasonably to the qualities of the surrounding neighbourhood.

The development therefore meets this objective.

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

  Comment:

  The proposed development, subject to conditions, will not result in any unreasonable impacts on any neighbouring property. The various potential impacts are discussed in detail elsewhere in this report.

  The proposed landscaping is suitable for the site, contains native species and will fit with the surrounding locality. This landscaping, combined with the architectural qualities of the building, will contribute to a positive streetscape outcome. The existing pedestrian areas will be maintained or improved and the development, overall, can reasonably be considered an attractive design outcome.

  The development therefore meets this objective.

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

  Comment:

  The boarding house design is considered to be innovative, using stepping, articulation, colours and materials, and landscaping to result in a high quality architectural outcome for the site.

  The development therefore meets this objective.

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

  Comment:

  The development provides level access from the street, a lift from the basement to both levels of the boarding house, and is located a relatively close distance from the large range of services, shops and transport options in Dee Why. It is considered that there will be a high level of access to and within this development.

  It is important to note that this is not a commercial development that requires a different and higher set of accessibility standards to be met.

  The development therefore meets this objective.

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

  Comment:

The site is not in an environmentally sensitive area. However, the visual impact of the development, discussed in detail elsewhere in this report, will not be intrusive. It is considered that the well designed building, along with the high quality landscaping will maintain or improve the scenic qualities of the area.

The development therefore meets this objective.

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

  Comment:

  The proposal provides for diversity in the supply of housing in the locality, additional housing choice within the local area and is relatively close to the large range of services, shops and transport options in Dee Why.

  The performance of the development and its impacts are considered to be acceptable (these are all discussed in detail in various sections of this report) and as such, the proposal will not result in any unreasonable environmental, economic or social impacts to surrounding properties or the local area.

  The development therefore meets this objective.

B5 Side Boundary Setbacks

Description of non-compliance

The bin storage structure has a nil setback to the western side boundary.

The control requires a minimum of 0.9m.

Note: Garbage storage structures are permitted within the front setback area.

Merit consideration

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

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

  Comment:

  The site provides more than the minimum requirement of 40% landscaped open space. The bin storage structure takes up 27.6% of the side boundary. The side setback area contains screen planting both behind and in front of the bin store.

  While the bin storage structure does remove the ability to plant vegetation along that particular portion of the side setback area, shifting the structure to a different part of the front yard would interrupt larger areas of contiguous landscaping (eg: the deep soil zone screening the driveway) and result in less calculable landscaped open space.

Both the overall site and the western side boundary area contain adequate deep soil landscaped areas.

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

  Comment:

  The bin storage structure is proposed to be surrounded on three sides with a 1.8m high wall. While this wall would act as the side boundary fence (which themselves can be and usually are 1.8m high), It is considered that a smaller scale structure would be less visually dominant.

  In this regard, a condition is recommended to be included in the consent, should this application be approved, requiring the wall around the bin store to be no higher than 1.2m or the height of the bins, whichever is higher. This will mean that the structure and the bins will sit entirely below the side boundary fence and will not become visually dominant.

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

  Comment:

  As discussed above, subject to a condition, the structure and the bins will sit entirely below the side boundary fence and will therefore result in a minimal scale and bulk.

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

  Comment:

  The bin storage structure directly adjoins an open right of carriageway (containing a driveway shared by properties to the south and south west). The nearest building is approximately 11.7m away.

  In this regard, the relatively minimal structure (subject to the condition discussed above) will not unreasonably impact on the spacial separation between itself and surrounding buildings, and will not unreasonably impact on privacy, amenity or solar access for any surrounding property.

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

  Comment:

  The structure and the bins will sit entirely below the side boundary fence and will not unreasonably impact on any views.

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

B9 Rear Boundary Setbacks

Description of non-compliance

The external stairs at the rear of the building are set back a minimum of 4.83m from the rear boundary.

The rear wall of the building is set back 6.0m.

The control requires a minimum of 6.0m.

Merit consideration:

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

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

  Comment:

  The site provides more than the minimum requirement of 40% landscaped open space. The external stair structure is 2.76m wide and is necessary to comply with fire safety provisions. The rear setback area is entirely deep soil landscaped open space, with the exception of the stair structure and a small stepping stone path.

  The relatively minor external stair structure does not significantly impact on the ability of the site or the rear yard to provide adequate opportunities for deep soil landscaping.

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

  Comment:

  The main wall of the boarding house is set back a minimum of 6.0m from the rear boundary. The external stair structure is only 2.76m wide on a site that has a width of 23.19m (i.e. 11.9% of the site). The landscape plan includes planting that will provide a high level of screening to the stairs and the rear of the boarding house.

  The stair structure serves to provide articulation to the rear of the building. Given its relatively small size in relation to the rear yard, and the planting proposed within the rear yard, the stairs will not unreasonably impact on the sense of openness created by the development.

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

  Comment:

  The stair structure does not contain any windows that would result in overlooking into any neighbouring properties. The rear wall of the development only contains five windows (four bathroom windows and one high level window to provide light and ventilation to the common circulation areas on the upper level).

  As the non-compliance stairs sit near the centre of the building (at the rear) there will be no unreasonable overshadowing impacts on any neighbouring properties.

Overall, the articulation that the stair structure provides to the rear of the building is a positive element to the design, and the non-compliance will not result in any unreasonable amenity impacts to adjacent land.

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

  Comment:

  The local area includes a variety of rear building setbacks and a variety of rear gardens and landscape elements. There is no readily discernible consistent pattern. This is in part due to the subdivision pattern of surrounding lots, in part due to the topography of the land, particularly to the east of the subject site, and in part due to dwellings and structures such as pools being constructed with varying setbacks to rear boundaries.

  The development proposed full compliance with the rear setback control with the exception of a 2.76m wide stair case on a 23.19m wide lot. The development will therefore fit reasonably well into the surrounding pattern of buildings, rear gardens and landscape elements.

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

  Comment:

  The stair structure does not contain any windows that would result in overlooking into any neighbouring properties. The rear wall of the development only contains five windows (four bathroom windows and one high level window to provide light and ventilation to the common circulation areas on the upper level). The rear yard contains ample space for planting to provide privacy for the surrounding dwellings and the proposed boarding house and the proposed landscape plan shows a suitable set of species for the site.

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

C3 Parking Facilities

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- ***To provide adequate off street carparking.***

  Comment:

  The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Number of Rooms	Car Spaces Provided

Boarding House	"Comparisons must be drawn with developments for a similar purpose."	14 x boarding rooms. 1 x managers room.	8 spaces (including 1 disabled space). Being a rate of 0.5 spaces per room (plus 1 space for the managers apartment)

The DCP does not specify a parking rate for boarding houses, rather, it requires a comparison to be made with developments for a similar purpose.

In order to decide on a reasonable rate for comparison, three points are worth noting.

The first is that the vast majority of approved and constructed boarding houses in the Northern Beaches LGA were approved using a rate of 0.2 spaces per room. This rate was the standard in the SEPP ARH until it was increased in June 2018 to 0.5 spaces per room. The increase in the SEPP ARH rate occurred after the lodgement of this DA.

The second point is that all current boarding houses that the SEPP ARH applies to, are being assessed under the 0.5 spaces per room rate, as this is the current standard in the SEPP ARH.

The third point is that a lower parking rate (compared to the rate for studio apartments which is generally 1 space per room) is granted to boarding house developments in the SEPP ARH because they are located close to (i.e. within 400m of) public transport options.

The subject site is located approximately 412m from the nearest bus stop, putting it just outside the 'accessible area' in the SEPP ARH. This has resulted in the SEPP ARH not applying to this site. However, the additional 12m does not mean that the subject site no longer has sufficient transport options to justify a low parking rate.

The site is located close to the Dee Why Town Centre (approximately 300m to the Redman Road Plaza, 420m to the Dee Why Grand Shopping Centre and approximately 510m to both the north and south bound B-Line bus stops). As such, this site has very good access to a large range of transport and services.

There are boarding houses in other parts of the Northern Beaches that, while located within 400m of a once an hour bus stop, do not have the same access to the range of transport and services that this development has. Because of this, the site is considered appropriate for a lower rate of parking than that imposed on a residential flat building with studio apartments.

The vast majority of approved and constructed boarding houses provide between 0.2 and 0.3 spaces per room and it could therefore be argued that rates as low as 0.2 or 0.3 spaces per room are suitable to be used as a comparison rate for this development. However, the current rate in the SEPP ARH is 0.5 spaces per room, which was increased (to apply retrospectively to current applications) in response to community concerns around the impact of boarding houses on street parking.

It could be then be argued that a compromise rate between 0.2 and 0.5 spaces per room is appropriate. However, given the site is located outside the 400m 'accessible area', it is considered that such a rate (eg: 0.4 spaces per room) is not sufficient. This leaves the highest possible rate, that is still a comparison with similar uses, being the current SEPP ARH rate of 0.5 spaces per room.

In this regard, a reasonable parking rate for this development in this location is 0.5 spaces per room.

The proposal provides 14 boarding rooms, 1 managers apartment and 8 car parking spaces. This equates to a rate of 0.5 spaces per boarding room (for a subtotal of 7) and 1 space for the manager (for an overall total of 8).

The development is therefore considered to provide adequate off street car parking.

- ***To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.***

  Comment:

  The parking spaces are located in a basement which will have a minimal visual impact on the street frontage due to a suitable landscaped setting within the front setback.

- ***To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.***

  Comment:

  The parking spaces are located in a basement which will not dominate the street frontage due to a suitable landscaped setting within the front setback.

C9 Waste Management

A detailed waste management plan has not been submitted with the application. To ensure proper disposal of demolition and builders' wastes, a condition has been included in the consent requiring details prior to the issue of a construction certificate.

D8 Privacy

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- ***To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.***

  Comment:

  Visual Privacy - North, South and West

The site does not directly adjoin any properties to the north (as it fronts the cul-de-sac).

To the south, the site directly adjoins No. 24 Redman Road, which does contain some areas of private open space in the northern part of their property (i.e. close to the subject site). The external stairs at the rear of the building are set back a minimum of 4.83m from the rear boundary. The rear wall of the building is set back 6.0m. The stair structure does not contain any windows that would result in overlooking into any neighbouring properties. The rear wall of the development only contains five windows (four bathroom windows and one high level window to provide light and ventilation to the common circulation areas on the upper level). The rear yard contains ample space for planting to provide privacy for the surrounding dwellings and the proposed boarding house and the proposed landscape plan shows a suitable set of species for the site.

To the west, the site adjoins the shared driveway. The closest dwelling to the west is No. 32 Redman Road, located 11.7m from the boundary of the subject site and 14.3m from the boarding house itself. The western elevation of the boarding house contains three boarding rooms and a common room on the lower level, and four boarding rooms (three of which have small terraces) on the upper level. The ground floor will be screened by the side boundary fence and by landscape planting. The three upper level terraces include full height privacy screens to prevent overlooking but still allow light and ventilation. The final upper level room contains one standard window that is 15.54m from the dwelling on No. 32 Redman Road.

In this regard, the proposal does not result in any unreasonable privacy impacts to properties to the north, south or west.

Visual Privacy - East

To the east, the side boundary of the subject site adjoins the rear boundary of three properties, Nos 33, 31 and 29 Burne Avenue (in order from north to south). The slope of the land mean that these three properties sit below the subject site. As a comparison, the first floor level of No. 33 Burne Avenue is RL 43.06 and the first floor level of No. 31 Burne Avenue is RL 42.62. The proposed first floor level is RL 49.355, more than 6.0m above the neighbouring floor levels.

The eastern elevation of the boarding house contains five boarding rooms on the lower level, and two boarding rooms and the managers apartment on the upper level. The two boarding rooms and the bedroom of the managers apartment, open out onto small terraces that face east (i.e. towards Nos 33, 31 and 29 Burne Avenue).

This difference in levels mean that the first floor boarding rooms mainly look out over the top of the neighbouring properties, however, it does mean that the potential for overlooking exists, particularly from the first floor terraces.

To minimise privacy impacts, the proposal includes a number of design solutions and a detailed landscape plan for screen planting along the eastern boundary (as well as other planting around the site).

The screen planting along the eastern boundary includes Lilly Pillys (3-5m in height), Sydney Golden Native (7-10m) and Sandstone Stringybark (15m). The Lilly Pillys will be hedged to a minimum height of 3.5-4m, putting them a little below the ceiling height of the ground floor rooms. The side boundary fence will provide some additional screening for the ground floor boarding rooms.

Finally, the first floor east facing terraces have been provided with 1.0m high, 500mm wide

planter boxes, positioned at the eastern edge of the terraces. These planter boxes will contain Flannel Flowers (0.5-1.5m) and Spiny Mat Rush (1-1.5m). Given the soil volume in the boxes, these plants are expected to grow to at least 300-400mm in height. The plants are native and require relatively minimal maintenance and watering.

As a result of the distance to the side boundary, the screen planting and, to a lesser extent, the boundary fence, the ground floor boarding rooms and their decks will not result in any unreasonable overlooking into Nos 33, 31 and 29 Burne Avenue.

The planter boxes on the first floor terraces will provide a minimum 1.3-1.4m high screen, and, being 500mm wide, will not allow a person to stand at the edge of the terrace. This design directs views out over the top of the neighbouring dwellings and greatly minimises the ability to look down into any areas of private open space. However, given that these terraces face the rear boundaries of the adjoining properties (which contain some areas of private open space and windows into the rear of the dwellings), privacy is of particular concern and Council must be satisfied that the design will result in no unreasonable impacts, rather than just minimising any impacts.

In this regard, it is recommended that the planter boxes be increased in height to 1.2m. This will mean that even 300mm high plants (noting that the plants can grow to between 0.5-1.5m) within the boxes, will provide a screen a minimum of 1.5m high while still preventing the viewer from standing at the edge of the terrace.

Provided the plants are maintained, this solution will result in the development having no unreasonable privacy impacts on Nos 33, 31 and 29 Burne Avenue.

In this regard, conditions can be included in the consent, should this application be approved, requiring the planter boxes to be increased to 1.2m in height and for the Boarding House Management Plan to be amended to ensure the plants within these boxes are maintained.

Subject to these conditions, the proposal will provide a high level of visual privacy for occupants and neighbours.

Acoustic Privacy

The boarding rooms will be occupied by one or two people. Some of the rooms include small terraces or decks, however, these are not large enough to comfortably hold more than 2 or 3 people.

The common room and common outdoor area are located in the north west corner of the development. This location is adjacent to the shared driveway and well away from the neighbouring dwellings to the south and east. The nearest dwelling to the west is 12.7m away. The common outdoor area is approximately $18m^2$ and therefore cannot comfortably hold a large group of people.

Screen planting is proposed along part of the western side of the common outdoor area. Part of the bin structure (the part only containing recycling bins to avoid odours affecting any users of the outdoor space) sits along the rest of the western side of the common outdoor area.

Given the screen planting, the relatively large distance to the closest neighbouring dwelling, the relatively small size of the outdoor area and that it is very unlikely that the space will be used by any more than a few residents at a time, the common outdoor area will not result in unreasonable acoustic privacy impacts.

To further ensure this, conditions could be included in the consent, should this application be approved, requiring; a) the Boarding House Manager to monitor noise from the common spaces, b) the use of the outdoor space to cease at 10pm, and c) for the Boarding House Management Plan to include a complaints process should any nearby resident be impacted by noise.

Overall, the siting and design of the proposal, along with the imposition of conditions of consent, will provide a high level of visual and acoustic privacy for occupants and neighbours.

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

  Comment:

  The proposed boarding house is well designed from both an architectural perspective and from the perspective of minimising impacts to neighbours.

  While it is acknowledged that many nearby residents do not want a boarding house on this site, the design of the building and the proposed landscaping will work well together to improve the urban environment.

- ***To provide personal and property security for occupants and visitors.***

  Comment:

  The proposal includes lockable entry and exit doors and a security door to the garage. The development will therefore provide suitable personal and property security for occupants and visitors.

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

D9 Building Bulk

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

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

  Comment:

  The proposed boarding house incorporates a number of design solutions to minimise building bulk. These include the use of articulation (to varying degrees) on all elevations, adding terraces to a number of rooms on both levels, providing some of these terraces with screening and some (that do not need it for privacy) without. The development also uses a range of colours and materials, including differences between the upper and lower levels, to break down the bulk of the structure.

  In addition, the architectural style of the building is considered to be reasonably aesthetically

pleasing, particularly from the street due to the level of articulation and stepping of the front elevation.

The level of compliance with the controls and the design solutions described above will result in a boarding house that is well designed from both an architectural perspective and from the perspective of minimising impacts to neighbours.

While it is acknowledged that the building will appear larger than a standard two storey detached dwelling, overall, the design of the boarding house, along with the high quality landscaping proposed, will improve the urban environment.

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

  Comment:

  The boarding house will be visible from the street and from the surrounding neighbouring properties. The views from the street will be more extensive that a standard lot, due to the open shared driveway to the immediate west of the site. This means that the building must present visually suitable northern (front) and western (side) elevations, being the elevation most visible from the public domain.

  The front elevation is heavily articulated on both the horizontal and vertical planes. This elevation also uses a range of different colours and materials that further break up the bulk. Together with the landscaping, the front elevation will be reasonably aesthetically pleasing and will not have an unreasonable visual impact.

  The western side elevation is articulated on both the horizontal and vertical planes and includes a varying range of set backs between 2.775m and 9.8m. This elevation uses open ground level decks, screened first floor terraces and a range of different colours and materials to break up the bulk. Together with the landscaping, the western side elevation will be reasonably aesthetically pleasing, partly screened by vegetation and will not have an unreasonable visual impact.

  Overall, the visual impact of the development, when viewed from adjoining properties and the street, has been minimised and will be acceptable.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

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

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

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

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

The preliminary assessment of the application determined that the subject site is located more than 400m walking distance of a bus stop used by a regular bus service. This meant that the site is not in an 'Accessible Area' as defined by the SEPP ARH and therefore the SEPP ARH does not apply to the proposed development. Therefore, the development relies upon the WLEP 2011 for its permissibility and the WLEP and WDCP for its assessment. However, to ascertain the merits of the proposal and to guide the assessment of the application, an assessment has been made against the provisions of the SEPP ARH.

The application was amended since its lodgement to address concerns raised by Council and the residents in response to the car parking changes made to the SEPP ARH and other matters. The consequential amendments resulted in a second notification. Overall, there were 56 submissions to the notification and numerous issues were raised, which are summarised and addressed in this report. Most of the issues raised could either be resolved with conditions or did not warrant the refusal of the application.

The boarding house itself is well designed and is compliant with the height, side boundary envelope, front setbacks and landscaped open space controls. It is also consistent with the provisions of the SEPP ARH (with the exception of the 'accessible area' requirement), including the parking requirements and the character assessment.

The only non-compliances relate to the garbage structure on the western side boundary (adjacent to an open driveway) being within the side setback, and the exit stairs at the rear of the dwelling being within the rear setback. As assessment of both of these non-compliances has found that they do not result in any unreasonable impacts and are supportable.

The amenity impacts of the building relate to privacy and noise. The privacy impacts involve the three small terraces on the upper level facing the eastern boundary. These terraces have the potential to overlook the three dwellings to the east. The applicant proposed a privacy solution to resolve this. It is

considered that this solution needs to be improved to result in no unreasonable impacts, however, this can be done through conditions, should the application be approved.

The fundamental issue in the assessment of this application is the "means of access" which is deemed to be unsatisfactory and has resulted in the recommendation for refusal based on the unsuitability of the site for a boarding house development.

While the site is located a reasonably close distance to a good range of shops, transport options and services in Dee Why Town Centre, the means of access from the site to Dee Why Town Centre to the site is problematic.

The detailed site reconnaissance and analysis of the access route revealed that the pedestrian pathway is generally flat between the Dee Why Town Centre (shops and transport) and a point approximately 70m east of the subject site. In this regard, the site sits above the escarpment which separates Redman Road into lower section and an upper portion. The lower portion is characterised by a medium density setting with residential flat buildings that have easy level access to the town centre and bus stops. The upper section is characterised by detached dwellings that requires residents to negotiate a series of 71 steps over a distance of 70 metres. The subject site sits at (or very close to) the top of the steps.

The walkability of the stepped access is not an easy task, especially when carrying shopping, baby, bicycle or the like. The residents of the proposed development will have to walk these steps as there is no convenient option to reach Dee Why Town Centre and the bus stops on foot.

Requiring the boarding house residents to walk this path, likely on a daily basis, is considered to be an unreasonable imposition. These steps are therefore considered to be an appropriate and reasonable means of access for a boarding house, owing to the reliance on occupants walking to public transport.

For this reason, the site is not considered to be suitable for the proposed development.

Such unsuitability means that, while the development itself is considered to be acceptable, it is not a good planning outcome and it is in the public interest to approve such a development in this location.

The application is therefore recommended for refusal for the reasons of the lack of suitability of the site and being contrary to the public interest.

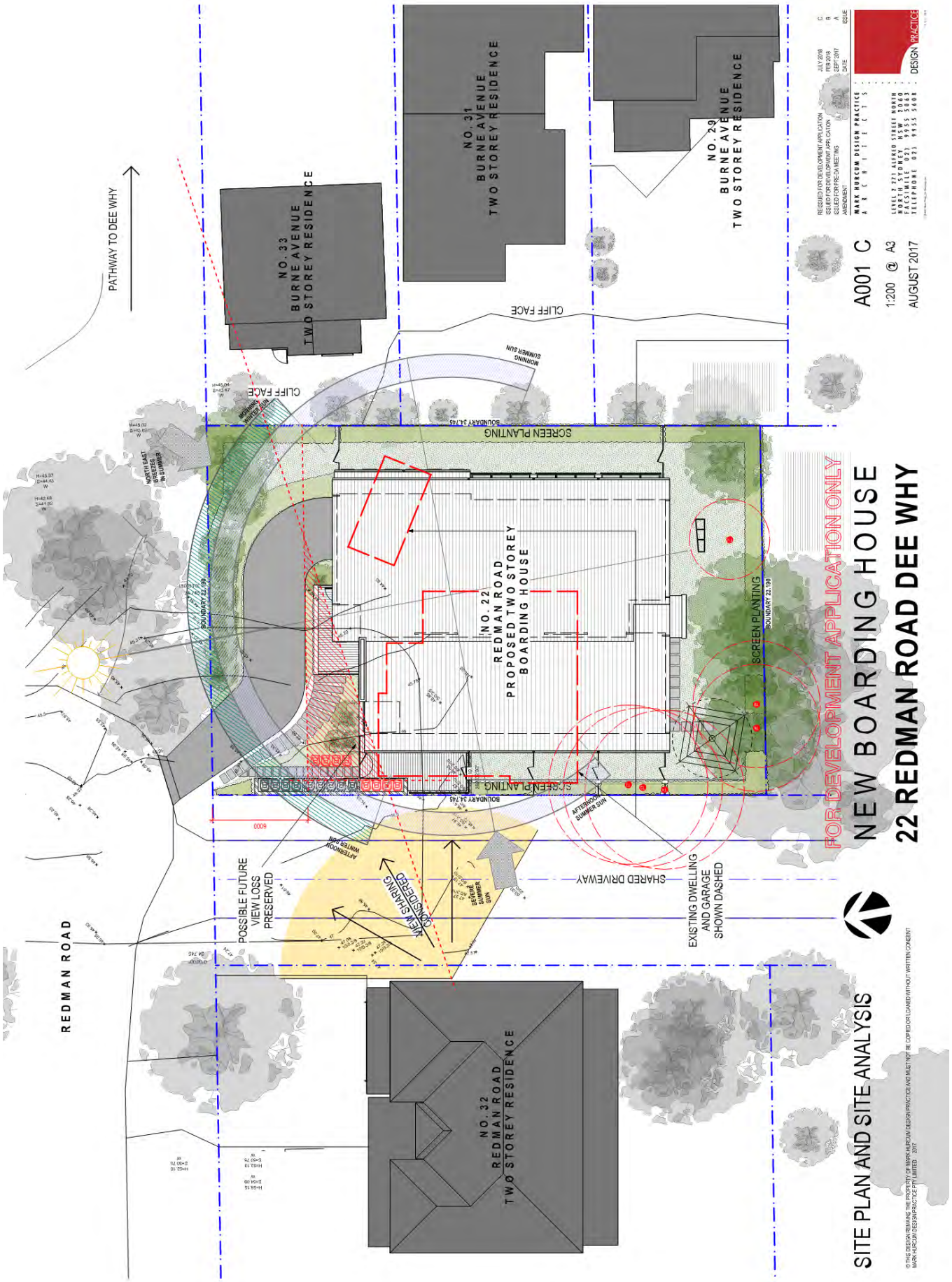
It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2018/0304 for the Demolition works and construction of a boarding house development on land at Lot K DP 402030,22 Redman Road, DEE WHY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 the subject site is not suitable for the proposed development. In this regard, the proposed means of pedestrian access to and from the nearest public transport and services is unsatisfactory.

2. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.


PATHWAY TO DEE WHY
NO. 33 BURNE AVENUE TWO STOREY RESIDENCE
NO. 31 BURNE AVENUE TWO STOREY RESIDENCE
NO. 29 BURNE AVENUE TWO STOREY RESIDENCE
CLIFF FACE
MORNING SUMMER SUN
SCREEN PLANTING
BOUNDARY 34.745
NO. 22 REDMAN ROAD PROPOSED TWO STOREY BOARDING HOUSE
BOUNDARY 22.190
AFTERNOON SUMMER SUN
AFTERNOON WINTER SUN
POSSIBLE FUTURE VIEW LOSS PRESERVED
VIEW SHARING CONSIDERED
SEVERE SUMMER SUN
SHARED DRIVEWAY
EXISTING DWELLING AND GARAGE SHOWN DASHED
REDMAN ROAD
NO. 32 REDMAN ROAD TWO STOREY RESIDENCE
FOR DEVELOPMENT APPLICATION ONLY
NEW BOARDING HOUSE
22 REDMAN ROAD DEE WHY
SITE PLAN AND SITE ANALYSIS
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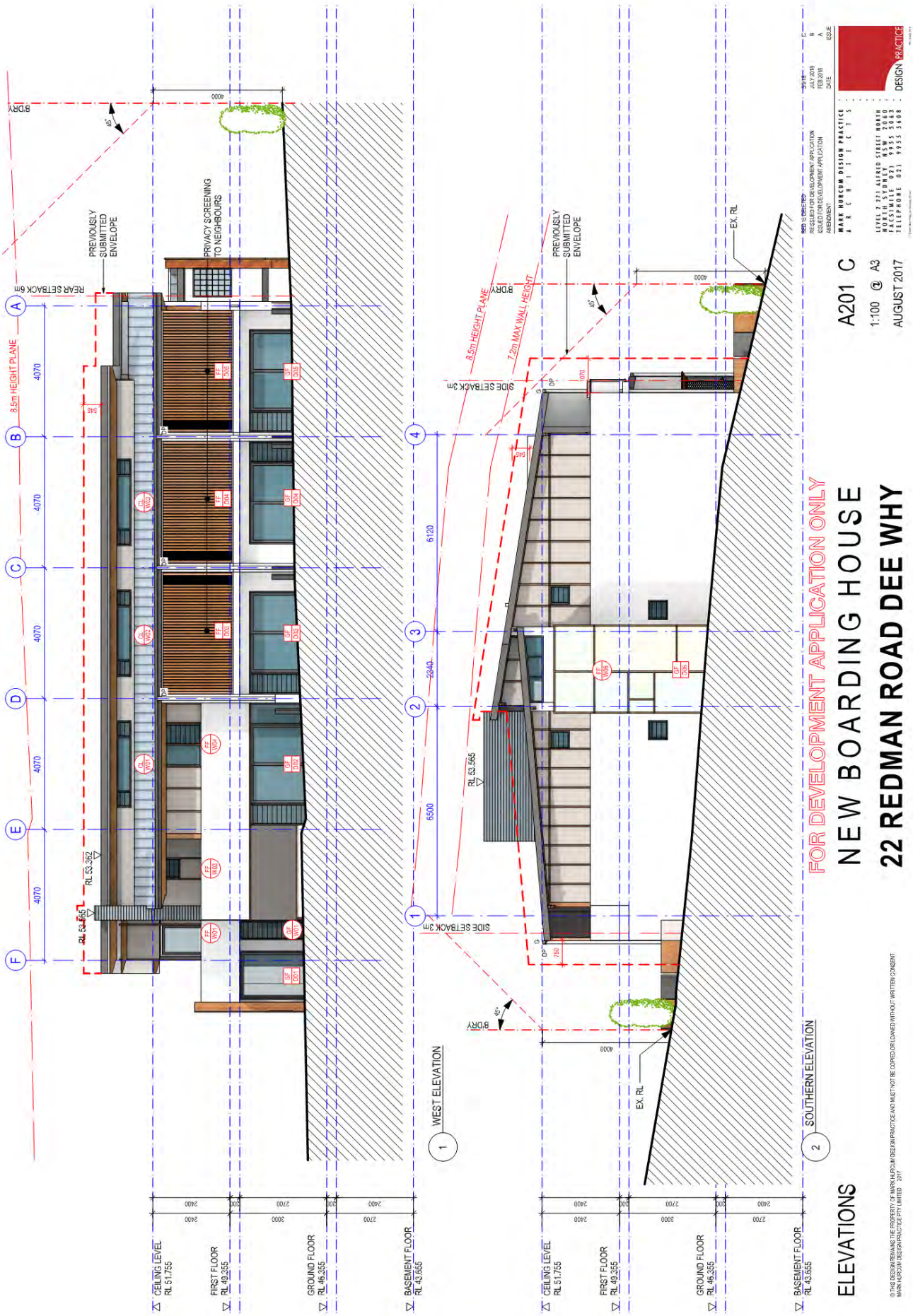
1:200 @ A3
AUGUST 2017
MARK HURCUM DESIGN PRACTICE
DESIGN PRACTICE


PREVIOUSLY SUBMITTED ENVELOPE
PRIVACY SCREENING TO NEIGHBOURS
REAR SETBACK 6m
8.5m HEIGHT PLANE
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4000
4070
RL 53.362
RL 53.565
WEST ELEVATION
8.5m HEIGHT PLANE
7.2m MAX WALL HEIGHT
SIDE SETBACK 3m
6120
2940
6500
RL 53.565
EX. RL
SOUTHERN ELEVATION
CEILING LEVEL RL 51.755
FIRST FLOOR RL 49.355
GROUND FLOOR RL 46.355
BASEMENT FLOOR RL 43.655
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FOR DEVELOPMENT APPLICATION ONLY
NEW BOARDING HOUSE
22 REDMAN ROAD DEE WHY
ELEVATIONS
A201 C
1:100 @ A3
AUGUST 2017
MARK HURCUM DESIGN PRACTICE
ARCHITECTS
LEVEL 2 221 ALFRED STREET NORTH NEUTRAL BAY NSW 2089
FACSIMILE (02) 9955 5083
TELEPHONE (02) 9955 5608
RESUBMITTED FOR DEVELOPMENT APPLICATION
RESSUED FOR DEVELOPMENT APPLICATION
ISSUED FOR DEVELOPMENT APPLICATION
AMENDMENT
JULY 2018
FEB 2018
DATE
ISSUE
DESIGN PRACTICE
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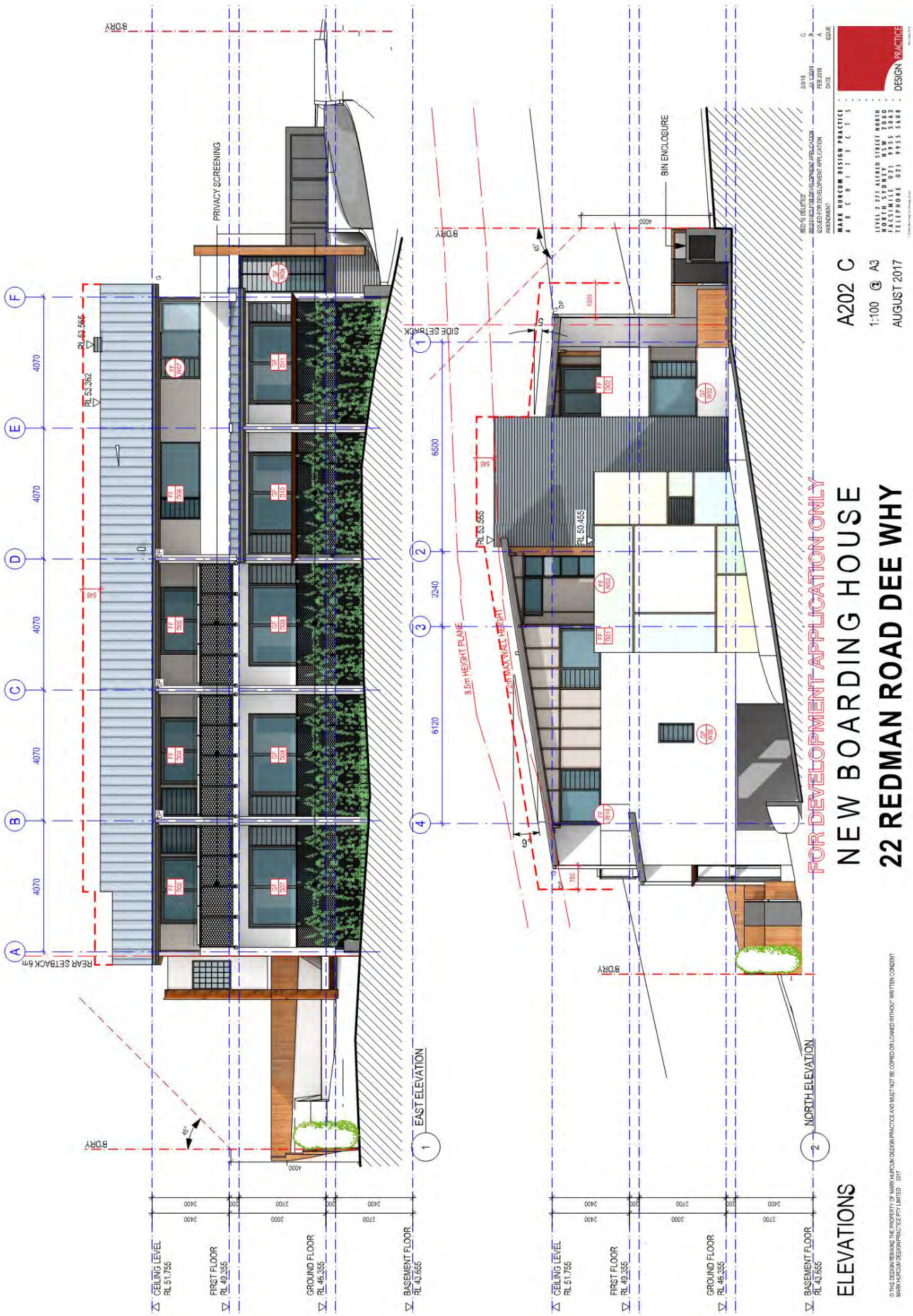
EAST ELEVATION
NORTH ELEVATION
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AUGUST 2017
NEW BOARDING HOUSE
22 REDMAN ROAD DEE WHY
FOR DEVELOPMENT APPLICATION ONLY
MARK HURCUM DESIGN PRACTICE
ARCHITECTS
DESIGN PRACTICE
PRIVACY SCREENING
BIN ENCLOSURE
SIDE SETBACK
REAR SETBACK 6m
B.DRY
3.5m HEIGHT PLANE
7.2m MAXIMUM HEIGHT
CEILING LEVEL RL 51.755
FIRST FLOOR RL 49.355
GROUND FLOOR RL 46.355
BASEMENT FLOOR RL 43.655
RL 53.565
RL 53.362
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