

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

MONDAY 9 DECEMBER 2019

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



Peter Robinson
Executive Manager Development Assessment

Panel Members

Peter Biscoe	Chair
Brian Kirk	Town Planner
Annelise Tuor	Town Planner
Phil Jacombs	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

**Agenda for a Meeting of the Northern Beaches Local Planning Panel
to be held on Monday 9 December 2019
in the Council Chambers, Civic Centre, Dee Why
Commencing at 1.00pm**

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2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 4 DECEMBER 2019

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 4 December 2019 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1	DA2019/1011 - 52 RAGLAN STREET, MANLY - USE OF PART OF PREMISES AS A COMMUNITY FACILITY WITH ASSOCIATED ALTERATIONS
REPORTING OFFICER	STEVE FINDLAY
TRIM FILE REF	2019/689162
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the applicant the council.

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. DA2019/1011 for use of part of premises as a Community Facility with associated alterations at Lot 2077 DP 752038 & Lot 2810 DP 726668, 52 Raglan Street, Manly subject to the conditions and for the reasons set out in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1011
Responsible Officer:	Sarah McNeilly (External Consultant)
Land to be developed (Address):	Lot 2077 DP 752038, 52 Raglan Street MANLY NSW 2095 Lot 2810 DP 726668, 52 Raglan Street MANLY NSW 2095
Proposed Development:	Use of part of premises as a Community Facility with associated alterations
Zoning:	Manly LEP2013 - Land zoned RE1 Public Recreation
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Crown
Applicant:	Northern Beaches Council
Application Lodged:	13/09/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Community facility
Notified:	27/09/2019 to 11/10/2019
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 876,288.00

EXECUTIVE SUMMARY

The application seeks consent for the change of use and internal fit out of the lower ground floor of Manly Soldier's Memorial Hall from a registered club to a community facility.

The need for a Northern Beaches community services hub was identified during the development of the Northern Beaches Community Centre Strategy and staff accommodation plan, with the lower ground floor of the Manly Soldiers Memorial Hall identified as a suitable location.

The change of use of Manly Soldiers Memorial Hall to a community facility will allow for specific community and not-for-profit organisations to access subsidised accommodation to enable them to provide direct community services to our local population.



The Manly Soldiers Memorial Hall central location in Manly town center is vital for the community and not-for-profit organisations to promote, and build connectivity to the local population leading to improved access and relationships to their clients.

The proposed works to the site are internal reconfigurations to create new office spaces, meeting rooms, breakout areas and associated facilities.

The application has been assessed against the planning controls of the Manly Local Environment Plan and the Manly Development Control Plan, and whilst there are some minor variations to parking and safety and security controls as a result of the proposal, the Planning Consultants independent assessment report has found these variations to be generally consistent with the relevant requirements, subject to conditions of consent.

The proposed development was notified and no submissions were received.

The independent Planning Consultant recommends that consent be granted to this application in accordance with recommended conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for the change of use and fit out of the lower ground floor of Manly Soldiers' Memorial Hall from a registered club to a community facility. The community facility will provide general assistance and advice on a range of programs, counselling services, homeless outreach, along with group meetings for a variety of community groups.

Hours of Operation

The community use will operate from 8am to 10.30 pm (seven days per week) with individual meeting and community group meetings proposed.

Staff

Staff of 45 will be employed with no more than 30 to be on site at any time.

Clients/ Visitors

A maximum of 20 clients will be on site at any time.

The proposal seeks internal alterations to the premises as follows:

The lower ground floor will be altered to:

- Demolish the stage on the western side and the partitions forming rooms/offices.
- Demolish the kitchen and cool room on the eastern side and the lobby area.
- New office partitioning will be constructed on the western side.
- New meeting rooms/breakout area and a new kitchenette on the eastern side.
- New lobby area and ramp/steps to provide accessible entry.
- Block the stairs to the upper level.
- New bathroom on the western side and some renovation to existing bathrooms including accessible bathroom.
- New floor coverings.

The upper ground floor, which is public administration, will be altered to:



- Demolish balustrade and handrails adjacent to the front entrance.
- Replace and repair the floor in this area.
- Provide secure entry within the building.

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 - Zone RE1 Public Recreation Manly Local Environmental Plan 2013 - 5.10 Heritage conservation Manly Development Control Plan - 3.2 Heritage Considerations
- Manly Development Control Plan - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise) Manly Development Control Plan - 3.6 Accessibility
- Manly Development Control Plan - 3.10 Safety and Security
- Manly Development Control Plan - Schedule 3 - Parking and Access

SITE DESCRIPTION

Property Description:	Lot 2077 DP 752038 , 52 Raglan Street MANLY NSW 2095 Lot 2810 DP 726668 , 52 Raglan Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site is located on the northern side of Raglan Street in Manly and is known as the Soldiers' Memorial Hall.</p> <p>The site is made up of 2 lots, with the northern lot comprising of a carport and the southern lot (fronting Raglan Street) occupied by the existing building. The sites western boundary fronts Kangaroo Street, the eastern boundary fronts Kangaroo Lane, and the rear boundary abuts the Kangaroo Street Youth Centre.</p>



The site is irregular in shape with a total area of 1524.1 m². The northern boundary measures 42.14 metres, the front boundary (Raglan Street) measures 31.995 metres, and the side boundaries measure 41.16 metres (Kangaroo Street) and 42.39 metres (Kangaroo Lane). The site slopes from the rear to the street front (from north to south).

The site is zoned RE1 Public Recreation and is currently developed with a two-storey building and a lower ground floor constructed of stone and brick with a tiled roof and car parking is at the rear. The building fronts directly onto the footpath of Raglan Street.

Adjoining and surrounding development is characterised by a mix of residential, commercial and community buildings. Manly Beach is located to the east of the site and the Manly Oval complex is directly opposite.

The site is listed as an Item of Environmental Heritage under the provisions of Manly Local Environment Plan 2013 (Heritage Item I216) and is also located within the vicinity of several other items.



Figure 1: Site Plan

SITE HISTORY

A search of Council's records has revealed the follow relevant applications over the history of the site.

The Soldiers' Memorial Hall construction was completed in 1926 and officially opened in 1927.

In 1953 an extension to the eastern side of the building was constructed.



Development Consent (**DA268/70**) for internal alterations was approved by Manly Council on 21 May 1971.

Building Application (**BA0462/1983**) was approved in 1983 for the fit-out of the dining room on the eastern side of the upper level of the existing building.

Building Application (**BA0644/1994**) was approved on 8 February 1995, for internal alterations to both levels of the existing building. It is understood that only the lower level internal alterations were carried out.

In 2002 the building was listed as a Local Heritage Item in the Manly LEP amendment 2002. Development Consent (**DA22/08**) was granted on 10 April 2008, for the use of the ground floor level as an educational establishment. This consent was not activated and has since lapsed.

In 2010, when Manly Rugby Club vacated the premises, Manly Fisho's Club occupied the building. However, this arrangement lasted less than 2 years.

A Building Certificate was issued to rectify the unauthorised fit out works to the kitchen and bar of the building in 2011.

In 2015 the Department of Primary Industries acquired the site, and on 8 September 2017, a notice appeared in the Government Gazette advising that Northern Beaches Council had been appointed as Trust Manager of the Kangaroo Street Community Centre Reserve Trust, which incorporates both parcels of land known as 52 Raglan St, for community purposes and government purposes.

Development Application (**DA2018/0951**) for the use of the upper floor of the existing building as public administration (Northern Beaches Council) was granted by the Northern Beaches Local Planning Panel on the 5 September 2018.

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	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p>



Section 4.15 Matters for Consideration	Comments
	<p>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 of consent.</p> <p>Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
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	The application was notified for a period of 14 days from 27/9/2019 to 11/10/2019. The public notification resulted in no objections.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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



REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of conditions and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Industrial)	There is no objection to the proposed change of use, and internal works subject to conditions of consent.
Waste (Council Building)	There are no objections to the proposal subject to a condition requiring the occupants to engage an external waste service provider for the removal of their generated waste.
Heritage officer	<p>This application has been referred as it proposes works to a listed heritage item - Item I216 - Memorial Club - 52 Raglan Street, Manly, which is listed in Schedule 5 of Manly Local Environmental Plan 2013.</p> <p>The subject site is also within the vicinity of a number of other local heritage items, the closest being St Andrew's Hall and Manse (54 Raglan Street), St Andrew's Presbyterian Church (56 Raglan Street) and Ivanhoe Park (opposite), which is also listed on the State Heritage Register. The subject site also adjoins the Pittwater Road Conservation Area.</p> <p>Details of this heritage item as outlined in the Manly Heritage Inventory, are:</p> <p>Item I216 - Memorial Club - 52 Raglan Street, Manly</p> <p><u>Statement of Significance</u></p> <p>The Soldiers' Memorial Hall, 52 Raglan Street, Manly, is of heritage significance for the people of Manly for historic, aesthetic, associative and reasons of rarity and representativeness. The building was created in 1927 as a Soldiers Memorial Hall, following an arduous effort to raise funds and attain the land. the building is an important design by the significant local architect Frederick Trenchard-Smith, also known for his activities in local civic affairs. The building commemorates the First World War and the Soldiers Imperial League of Australia, while the addition on the corner of Raglan Street and Pittwater Lane commemorates the Second World War. The design of the building exemplifies taste of the Interwar period through the Classical Revival architectural style.</p> <p>This application is for proposed works to the Soldiers Memorial Hall at 52 Raglan Street. These works involve the change of use of the ground floor of this building from a registered club to community uses, along with the fit-out of the ground floor and associated minor buildings works.</p> <p>The proposed works include fit-out of the ground floor to create offices, meeting rooms, kitchenette etc, along with the creation of an accessible toilet and the blocking off of internal stairs between the ground floor and the upper level. These works are not affecting any original building fabric, as the ground floor has been extensively altered over the years. They are also largely reversible as the fit-out will be creating spaces with petitions rather than new walls. It is considered that these fit-out works will not impact upon the heritage significance of the building. It is understood that</p>



	<p>these fit-out works will not remove the original remaining elements of the Memorial Club, including the Eternal Flame light and the Honour Board, which are both located on the ground floor.</p> <p>Other proposed works, including external works to the building, have the potential to impact upon original fabric and the aesthetic significance of the building. These include changes to the front entrance on Raglan Street to create an accessible entry and provision of a retractable security screen. The exterior works also include repair of sandstone and the replacement of the lower ground floor exterior doors on Kangaroo Street with like for like replacement.</p> <p>The plans have been reviewed along with the Statement of Heritage Impact, by <i>Extent Heritage Advisors</i>, dated September 2019. The proposed works have also been assessed in relation to the heritage provisions contained within Manly DCP 2013.</p> <p>The main changes involve works to the ground floor entrance onto Raglan Street, which is being altered to make the ground floor accessible and secure. Details of these changes, as shown on the plans and described in the SHI have been reviewed and it is considered that the works will not have an adverse impact upon the heritage significance of the Memorial Club. The installation of a concealed roller grille is considered acceptable, as it will be in a recessive colour matching the new Raglan Street balustrade and steel frame. However, installation of this security screen should not involve any penetration into existing sandstone.</p> <p>Overall, it is considered that these works will have a negligible impact upon the heritage significance of the building, as exterior works are limited to repair and like for like replacement, with the exception of the main entrance on Raglan Street where minor changes to non-original building elements are proposed. Making the building accessible will ensure it can be used in the future by all members of the community and while the proposed use is not for a registered club, these changes will not prohibit the building being used for that purpose in the future.</p> <p>It is considered that the minor nature of these proposed works will not impact upon the significance of heritage items located in the vicinity nor impact upon the Pittwater Road Conservation Area.</p> <p>Therefore, having considered the application and assessing it in relation to the heritage provisions contained within Manly DCP 2013, no objection is raised to this application on heritage grounds, subject to a number of conditions:</p> <ul style="list-style-type: none"> • all re-pointing of sandstone is to be done with a traditional lime mortar recipe, to match the colour and composition of original mortar in the vicinity of the repair; • all original building fabric in the vicinity of the works to the Raglan Street entrance (e.g. stone columns, light fittings and other fabric including surrounding sandstone) is to be protected from damage at all times during construction; • the Eternal Flame light and the Manly Soldiers Memorial Hall Honour Board, located on the ground floor, should retained in-situ and considered for interpretation; • Colours, materials and finishes are to be as specified in the Heritage Impact Statement by Extent Heritage Advisors, dated September 2019; and • an archival photographic record is to be prepared documenting the exterior of the building and the ground floor area, prior to any works commencing.
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Traffic Engineer	It is noted that the adequacy of the parking associated with the use of this building was previously assessed in conjunction with the assessment of DA2018/0951. The shortfall of two parking spaces is noted however as the application is for re-use of an existing building with limitations on the ability to provide additional parking, no concerns are raised with regard to approval of the application subject to the provision of bicycle parking spaces to meet DCP requirements.
Waste Officer (Council Land)	No objection subject to conditions.

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 commercial 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 (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

Only internal changes are proposed and accordingly no changes result to any principle development standards including height and floor space ratio.

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Part 5 Miscellaneous provisions	Yes
5.10 Heritage conservation	Yes
6.12 Essential services	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

Zone RE1 Public Recreation

The proposed use fits the definition for a community facility which is permissible within the RE1 Public Recreation zone.

community facility means a building or place:

- (a) owned or controlled by a public authority or non-profit community organisation, and
- (b) used for the physical, social, cultural or intellectual development or welfare of the community, but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.

5.10 Heritage conservation

The site is nominated as an item of heritage under the provisions of Schedule 5 of the LEP, being Item No. I216, Soldiers' Memorial Hall. The site is also located within the immediate vicinity of several other heritage items (listed below) and abuts the Pittwater Road Conservation Area.



- Manly St Andrew's Hall and manse 54 Raglan Street Lots 1 and 2, DP 1134642 Local I217
- Manly St Andrew's Presbyterian Church 56 Raglan Street Lot 1, DP 1045408 Local I218
- Manly House 15–17 Pittwater Road Lots 1–5, SP 64980 Local I197
- Manly Baby health care centre building 1 Pittwater Road Lot 1, DP 933364 Local I196
- Manly Ivanhoe Park Ivanhoe Park (bounded by Sydney Road, Belgrave Street and Raglan Street) Lot 2502, DP 1143032; Lots 2424, 2661 and 2726, DP 752038; Lot 7379, DP 1164856 Local I162
- Manly Natural escarpment Kangaroo Reserve Park Local I164

Following detailed assessment of the proposed development, the consent authority can be satisfied of the following:

- A Statement of Heritage Impact was submitted as part of the proposal. The Statement of Heritage Impact concludes that there is unlikely to be unreasonable impacts to the heritage significance of the heritage building or the heritage items within the area of the subject site, therefore, satisfying the matters as listed in clause 5(a)(b) & (c).

Council's Heritage officer has provided support for the proposed change of works and fit out, which will not impact the heritage fabric of the building and are not to the detriment of the significance of the site or that of the neighbouring items. Conditions of consent are proposed to ensure that the proposed works do not impact upon the significance of the heritage item or those surrounding.

6.12 Essential services

The proposal will provide essential services as part of the proposal.

Following detailed assessment of the proposed development, the consent authority can be satisfied of the following:

- The proposal has been designed to provide the services listed in clause 1(a)(b) & (c)
- The proposal has been designed, sited and will be managed stormwater matters listed in clause 3(d)
- The proposal has been designed, sited to provide reasonable vehicle access as listed in clause 3(e)

As such, the proposal is considered to be consistent with the matters prescribed by clauses 1 and 2 of 6.12 Essential Services, within Manly Local Environment Plan 2013.

Manly Development Control Plan

Built Form Controls

The site is zoned RE1 and accordingly due to the proposed changes being internal only, the Manly Development Control Plan 2013 does not include any built form controls that apply to the proposed development.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part 3	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



3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.4.1 Demolition	Yes	Yes
Schedule 3 - Parking and Access	No	Yes

Detailed Assessment

3.2 Heritage Considerations

The proposal is for a change of use and internal alterations and fit out. The heritage significance of the site is unaffected with external structure of the site unchanged. Council's heritage officer is supportive of the proposed development and no additional consideration is required.

3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

The change of use and fit out will be for an appropriate community use, which is considered to have a lesser impact, with regard to noise and hours of operation than the previous approved use as a registered club.

3.6 Accessibility

The revisions to improve access to the heritage building as detailed in the BCA report and plans are supported by Council's Building and Heritage officers. No further consideration is required.

3.10 Safety and Security

The proposed community users currently operates from an alternate location on Wentworth Street in Manly. The relocation to the Manly Soldiers Memorial Hall is supported by the Northern Beaches Police Command and Council's Community Safety Coordinator subject to conditions of consent.

Recommendations from the Councils Community Safety Co-ordinator include:

- An additional CCTV camera to be placed at the Kangaroo Lane side of the building
- The access door onto Kangaroo Lane to operate as an emergency access door
- Duress alarms are fitted in appropriate locations within the service
- A shutter door to be installed at the front entrance, to be pulled down after closing time.

Once the fit out has been completed another CPTED inspection can be undertaken to review the completed site.

Therefore, there is no objection to the proposal subject to conditions of consent.

Schedule 3 - Parking and Access

Schedule 3 of the DCP does not include provisions for community facilities. The RMS Guidelines for Traffic Generating Development also provides no parking schedule for community uses. The site has 24 car spaces which are shared between the upper floor and the ground floor which is the subject of this application. The number of staff and visitors to the community facility is considered to be less than would have been permitted for the previously approved club use. As there is no ability to provide additional parking in any location and the close proximity to public transport and the village centre of Manly, the existing parking is considered appropriate based on a merit assessment.



Additionally, we note that the traffic report provided with DA20198/0951 for the change of use of the upper floor to public administration also considered the change of use of the lower floor. The conclusion of this report was that there was a shortfall of only 2 spaces which is justifiable due to the site-specific circumstances as discussed above. It is considered that this provides further validation the change of use as proposed.

Further we note that Council's Traffic Engineer supports the application in its current form subject to a condition of consent requiring 8 bicycle spaces.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

S7.12 levies are not applicable to this application as they were subject to the original development application relating to the whole site.

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

This report provides a detailed assessment of the change of use and internal fitout of the Manly Soldiers Memorial Hall at 52 Raglan Street, Manly.

Public Exhibition

The public exhibition of the application resulted in no submissions.

Referrals

The application was referred to five (5) internal departments and no objections were raised, subject to conditions.

Assessment of the Proposal

The application has been assessed against the planning controls of the Manly Local Environment Plan



and the Manly Development Control Plan. Whilst there are some minor variations to the parking, heritage and safety and security controls as a result of the proposal, the Planning Consultants independent assessment report has found these variation to be generally consistent with the relevant requirements, subject to conditions of consent.

Recommendation - Approval

In summary, the external consultant has recommended the proposal for approval as the change of use of Manly Soldiers Memorial Hall to a community facility will not impact upon the environment, or the character of the locality and is considered to be within the public interest.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2019/1011 for Use of part of premises as a Community Facility with associated alterations on land at Lot 2077 DP 752038, 52 Raglan Street, MANLY, Lot 2810 DP 726668, 52 Raglan Street, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Lower Ground Floor Plan – Existing A01 Rev A	August 2019	Building Assets Planning Design and Delivery Northern Beaches Council
Site Plan, Drawing List and Project Numbers A00 Rev A	August 2019	Building Assets Planning Design and Delivery Northern Beaches Council
Upper Ground Floor - Existing A02 Rev A	August 2019	Building Assets Planning Design and Delivery Northern Beaches Council
Lower Ground Floor Plan - Demolition A03 Rev A	August 2019	Building Assets Planning Design and Delivery Northern Beaches Council
Upper Ground Floor - Demolition A04 Rev A	August 2019	Building Assets Planning Design and Delivery Northern Beaches Council
Lower Ground Floor - Proposed A05 Rev A	August 2019	Building Assets Planning Design and Delivery Northern Beaches Council
Upper Ground Floor - Proposed A06 Rev A	August 2019	Building Assets Planning Design and Delivery Northern Beaches Council
South Elevation - Existing A07 Rev A	August 2019	Building Assets Planning



		Design and Delivery Northern Beaches Council
West Elevation - Existing A08 Rev A	August 2019	Building Assets Planning Design and Delivery Northern Beaches Council
North Elevation - Existing A09 Rev A	August 2019	Building Assets Planning Design and Delivery Northern Beaches Council
East Elevation - Existing A10 Rev A	August 2019	Building Assets Planning Design and Delivery Northern Beaches Council

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Statement of Heritage Impact	September 2019	Extent Heritage Advisers
Access Report	August 2019	Code Performance
Building Code Audit Report	30 August 2019	DPC

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. 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.

3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.



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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

Reason: To ensure that works do not interfere with reasonable amenity expectations of



residents and the community.

4. Waste Removal

The lease agreement for the tenancies of the ground floor are to stipulate that occupants engage a waste collection service that provides daily removal of all waste from the premises for appropriate disposal. Waste may not be stored within the property or deposited in Council bins.

Reason: To ensure efficient waste management and the amenity of the area.

FEES / CHARGES / CONTRIBUTIONS

5. Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

6. Amendments to the approved plans for Security and Safety

The following amendments are to be made to the approved plans:

- (a) An additional CCTV camera is to be placed at the Kangaroo Lane side of the building
- (b) The access door onto Kangaroo Lane is to operate as an emergency access door
- (c) Duress alarms are fitted in appropriate locations within the service
- (d) A shutter door is to be installed at the front entrance, to be pulled down after closing

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

Reason: To ensure a safe environment for staff, clients and the local community.

7. Building Code of Australia Upgrade requirements

The recommendations made in the Building Code Audit Report prepared by DP Property Consulting, dated 30 August 2019, Report Ref No. J3002 are to be carried out in full to the building.

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



Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

8. Building Code of Australia Access Upgrade requirements

The Building Code of Australia works and access upgrading measures to upgrade the building as detailed and recommended in the Access Report prepared by Code Performance, dated August 2019, Report Ref No. 17403 - R1.1 are to be carried out to the building. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for Access for building occupant safety.

9. Colours, materials and finishes

Colours, materials and finishes are to be generally as specified in the Heritage Impact Statement by Extent Heritage Advisors, dated September 2019

Reason: To ensure materials and colours are appropriate for the heritage building

10. Archival Photographic Record

A simple archival photographic record is to be prepared, which documents the exterior of the building and the ground floor, prior to any works. This record can be in digital form and is to be submitted to Council's Heritage Advisor for approval.

Reason: To ensure there is a record of this heritage building prior to changes being made.

11. Waste Management Plan

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

12. 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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDINGWORK

13. Re-pointing and repair of sandstone

Any re-pointing of sandstone is to be done with a traditional lime mortar recipe, to match the colour and consistency of original mortar in the vicinity of the repair.



Reason: To ensure that original sandstone fabric is appropriately repaired in accordance with best heritage practice. (DACHEEDW1)

14. Protection of original fabric - Raglan Street entrance works

All original building fabric in the vicinity of the works to the Raglan Street entrance (e.g. stone columns, light fittings and other fabric including surrounding sandstone) is to be protected from damage at all times during construction;

Reason: To ensure original fabric is not damaged during construction works. (DACHEEDW2)

15. Waste Management During Development

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

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

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

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

16. Waste Management Confirmation

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

17. 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 Principal Certifier prior to the issue of any Interim or 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.

18. Bicycle Parking

That bicycle parking capable of accommodating no less than 8 bicycles be provided in a publicly accessible area in the environs of the site.

Reason: <to provide for active travel to/from the location> (DACTRFPOC1)

**ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES****19. Retention of Eternal Flame and Honour Board**

The Eternal Flame light and the Manly Soldiers Memorial Hall Honour Board, located on the ground floor, should be retained in-situ and considered for interpretation

Reason: To retain original elements of movable heritage in-situ. (DACHEGOG1)

20. Noise

The use of the premise must be controlled so that any emitted noise is at a level so as not to create an "offensive noise" as defined in the Protection of the Environment Operations Act 1997 to any affected receiver.

Reason: To comply with Noise Legislation.

21. Hours of Operation

The hours of operation are to be restricted to:

Monday to Friday – 8.00am – 10.30pm

Saturday – 8.00am – 10.30pm

Sunday and Public Holidays – 8.00am – 10.30pm

Upon expiration of the permitted hours, all services (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

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

DRAWING LEGEND

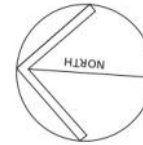
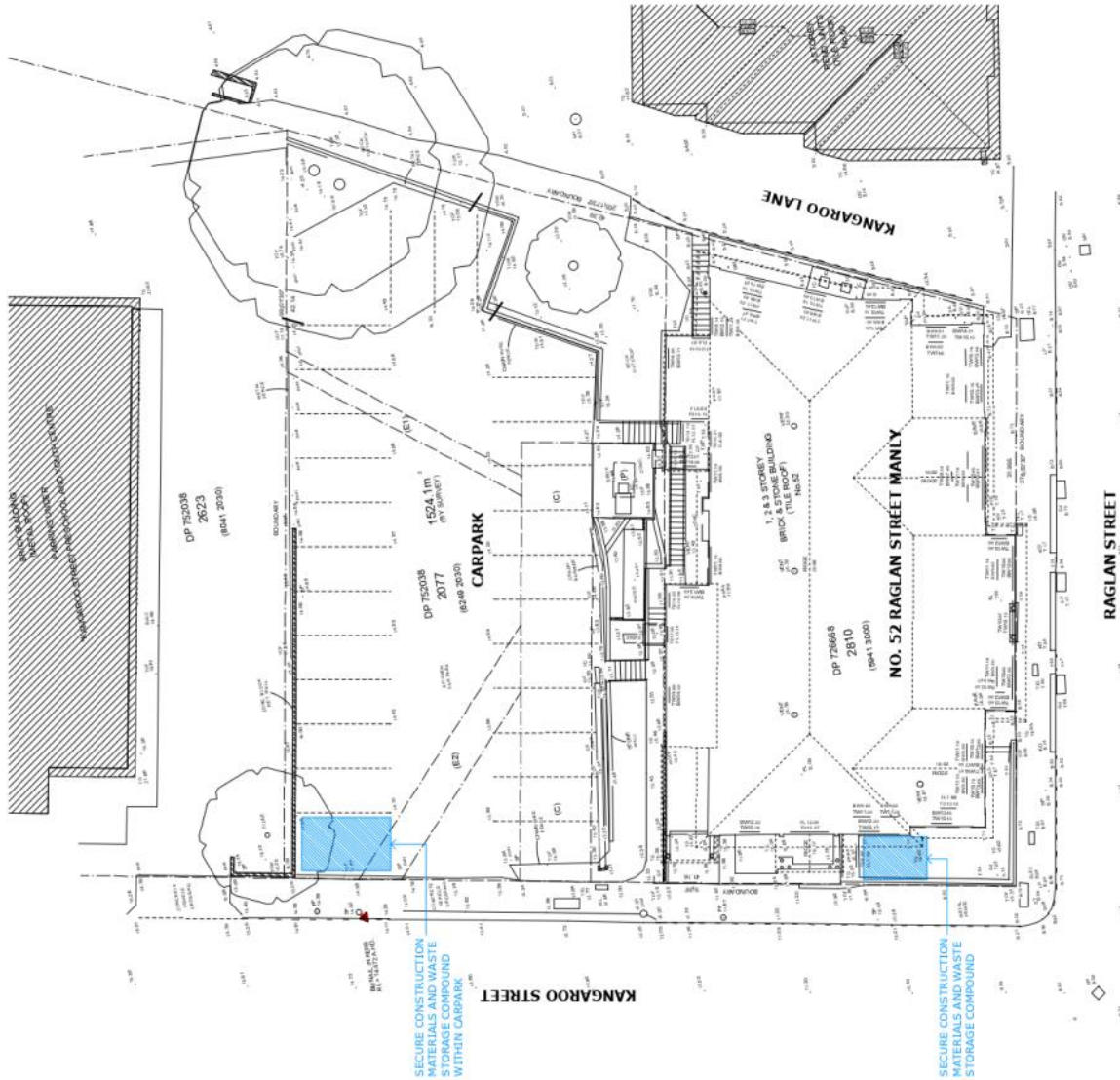
	EXISTING BUILDING FABRIC
	DEMOLITION
	PROPOSED NEW WORK

PROJECT NUMBERS:

ITEM	DWG TITLE	EX AREA	PROP AREA
SITE AREA		1324.1 SQM	AS EXISTING
CARPARK		642 SQM	AS EXISTING
PLANT SPACE		37 SQM	AS EXISTING
LOWER GROUND FLOOR GFA		559 SQM	AS EXISTING
UPPER GROUND FLOOR GFA		528 SQM	AS EXISTING
			534 SQM

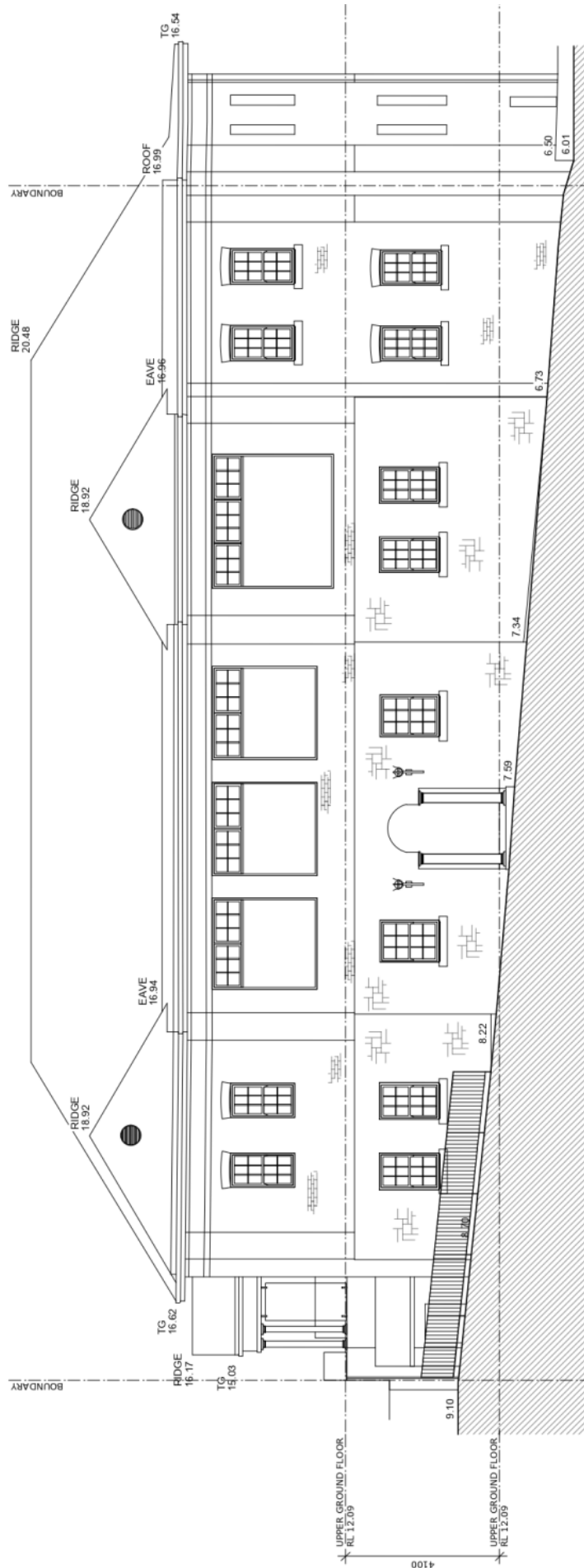
DRAWING LIST

DWG NO	DWG TITLE
A00	EXISTING OCCUPATION PLAN
A01	UPPER GROUND FLOOR PLAN - EXISTING
A02	UPPER GROUND FLOOR PLAN - EXISTING
A03	UPPER GROUND FLOOR PLAN - DEMOLITION
A04	UPPER GROUND FLOOR PLAN - PROPOSED
A05	UPPER GROUND FLOOR PLAN - EXISTING
A06	UPPER GROUND FLOOR PLAN - EXISTING
A07	UPPER GROUND FLOOR PLAN - EXISTING
A08	WEST ELEVATION - EXISTING
A09	NORTH ELEVATION - EXISTING
A10	EAST ELEVATION - EXISTING
A11	BUILDING ENTRY DETAILS - PROPOSED
N01	NOTIFICATION PLANS - SHEET 1 OF 2
N02	NOTIFICATION PLANS - SHEET 2 OF 2



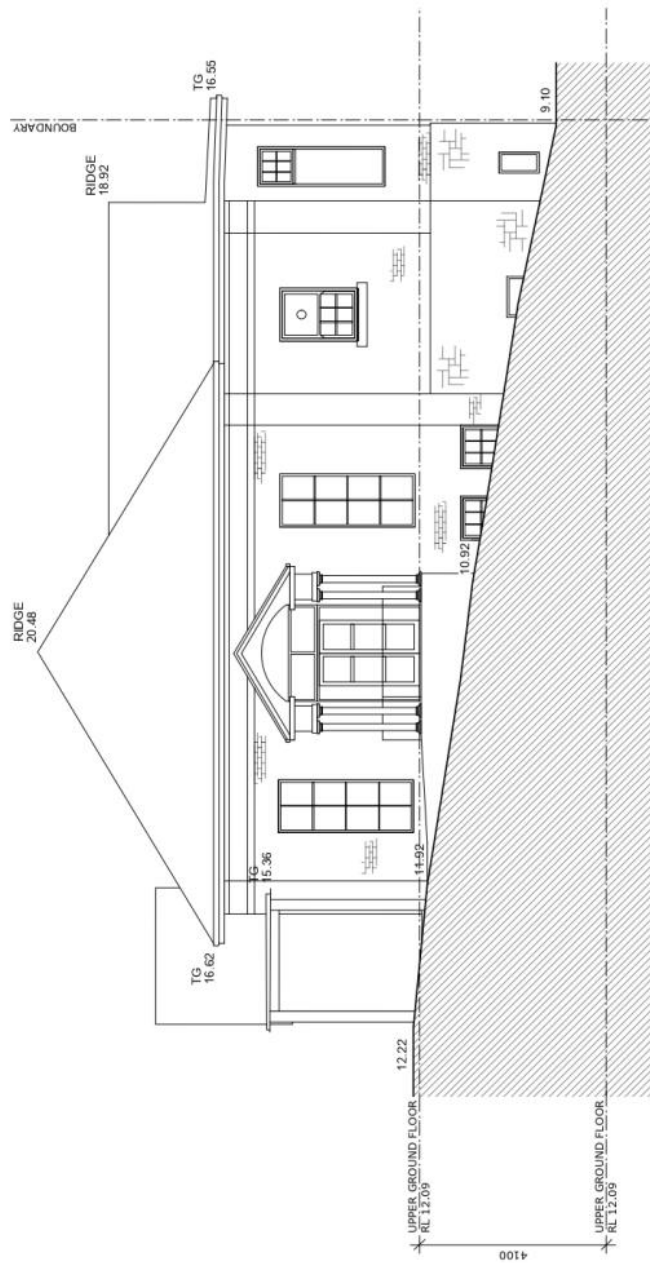
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SCALE 1:250 @ A3

Rev	Description	Date	General notes	Project	Drawing Title:	Drawing Date:	Dwg no:
A	DA SUBMISSION	SEPT 2019	1. Read in conjunction with the Survey Site Plan. 2. Do not scale off drawings.	Raglan Street Community Hub Lower Ground Floor, 52 Raglan Street Manly	Site Plan, Drawing List and Project Numbers	August 2019	A00
Prepared by: Northern Beaches Council							Revision: A

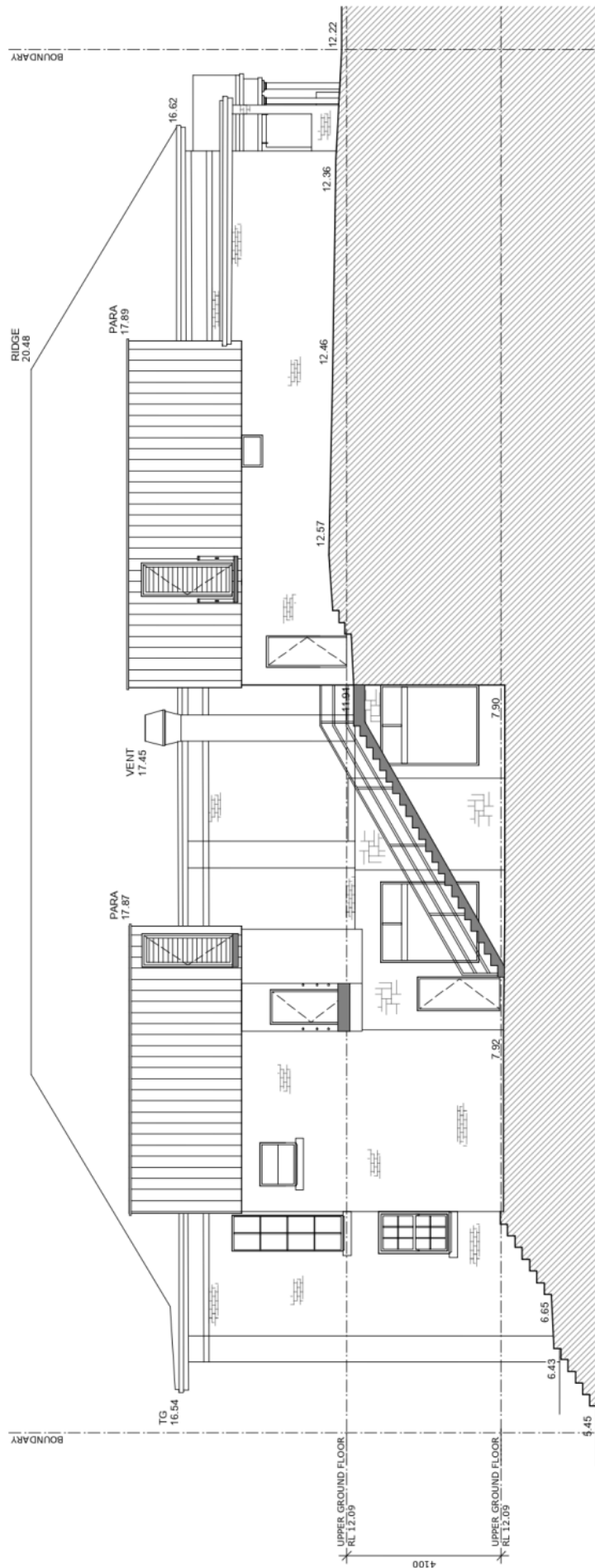


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SCALE 1:100 @ A3

Rev	Description	Date	General notes	Project	Drawing Title	Drawing Date:	Dwg no:
A	DA SUBMISSION	SEPT 2019	1. Read in conjunction with the Survey Site Plan. 2. Do not scale off drawings.	Raglan Street Community Hub Lower Ground Floor, 52 Raglan Street Manly	South Elevation - Existing	August 2019	A07
Prepared by: Planning Design and Delivery Northern Beaches Council							Revision: A

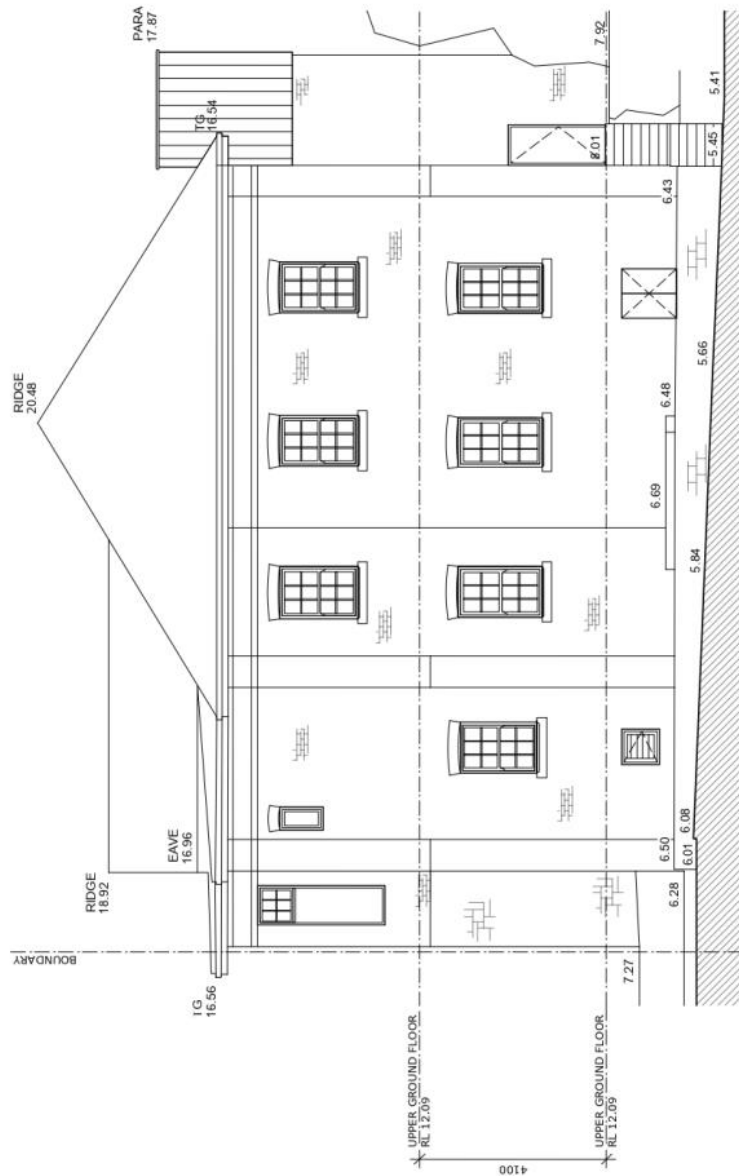


Rev	Description	Date	General notes	Project:	Drawing Title:	Drawing Date:	Dwg no:
A	DA SUBMISSION	SEPT 2019	1. Read in conjunction with the Survey Site Plan. 2. Do not scale off drawings.	Raglan Street Community Hub Lower Ground Floor, 52 Raglan Street Manly	West Elevation - Existing	August 2019	A08
					Prepared by: Planning Design and Delivery Northern Beaches Council		Revision: A



0m 1m 2m 5m
SCALE 1:100 @ A3

Rev	Description	Date	General notes	Project	Drawing Title	Drawing Date:	Dwg no:
A	DA SUBMISSION	SEPT 2019	1. Read in conjunction with the Survey Site Plan. 2. Do not scale off drawings.	Raglan Street Community Hub Lower Ground Floor, 52 Raglan Street Manly	North Elevation - Existing	August 2019	A09
					Prepared by: Northern Beaches Council		Revision: A



Rev	Description	Date	General notes	Project:	Drawing Title:	Drawing Date:	Dwg no:
A	DA SUBMISSION	SEPT 2019	1. Read in conjunction with the Survey Site Plan. 2. Do not scale off drawings.	Raglan Street Community Hub Lower Ground Floor, 52 Raglan Street Manly	East Elevation - Existing	August 2019	A10
					Prepared by: Northern Beaches Council		Revision: A

ITEM 3.2	DA2019/0081 - 307 SYDNEY ROAD, MANLY - DEMOLITION WORKS AND CONSTRUCTION OF RESIDENTIAL ACCOMMODATION
REPORTING OFFICER	RODNEY PIGGOTT
TRIM FILE REF	2019/689190
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

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

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives of the zone.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2019/0081 for demolition works and construction of residential accommodation at Lot D DP 335027 & Lot 1 DP 115705, 307 Sydney Road, Balgowlah subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0081
Responsible Officer:	Benjamin Price
Land to be developed (Address):	Lot 1 DP 115705, 12 Boyle Street BALGOWLAH NSW 2093 Lot D DP 335027, 307 Sydney Road BALGOWLAH NSW 2093
Proposed Development:	Demolition Works and construction of residential accommodation
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Nicole Bronwen Easterbrook Trevor Stephen Easterbrook
Applicant:	Sun Property Northbridge Pty Ltd
Application Lodged:	04/02/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Tourist
Notified:	14/09/2019 to 28/09/2019
Advertised:	14/09/2019
Submissions Received:	46
Clause 4.6 Variation:	4.3 Height of buildings: 14.1%
Recommendation:	Approval
Estimated Cost of Works:	\$ 6,605,666.00

The application seeks consent for the demolition of the existing building 12 Boyle Street, retention of the heritage listed building 307 Sydney Road and construction of residential accommodation containing eight units with basement parking. Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and appropriate development for the subject site. The application is reported to the NBLPP as it includes a 14.1% variation to the Height of Buildings Development Standard and has received 49 submissions.

Based on the developments consistency with the surrounding and nearby development as well as the applicants justification, the 14.1% variation to the Height of Buildings development standard has been found to be acceptable. In particular, the area of non-compliance is limited in its extent and does not

result in any unreasonable impacts on the amenity or streetscape of the locality.

The application was advertised to the surrounding and nearby residents. In response 49 submissions were received. The main issues raised by the submissions were as follows :

- Bulk and scale impact on streetscape and character
- Amenity impacts
- Traffic Impacts
- Impact on the heritage building

These issues have been addressed below and are not considered to warrant the refusal of the application.

The application has been referred to Councils Heritage, Waste, Landscape, Development Engineering and Traffic Engineering officers. No issues that warrant the refusal of the application have been raised.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be approved subject to conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes demolition works and construction of multi dwelling housing consisting of four separate, two dwelling buildings that are predominantly two storeys. The development incorporates the existing heritage building within the design. From north to south the development will include the following:

Building 1

Two storey building with access to Sydney Road via an existing battle axe handle and right of carriageway over 305 Sydney Road. There is no development proposed on the adjoining battle axe handle. This building consists of:

Ground Floor - Two bedroom dwelling with hardstand parking space forward of the building, visitor parking space, attached double garage for the use of the first floor unit

First Floor - Three bedroom dwelling

Building 2

Alterations to the existing single storey heritage building to create a two storey building with basement parking consisting of:

Basement - Double garage and visitor parking, access from Boyle Street

Ground Floor - Three bedroom dwelling within the existing heritage curtilage

First Floor - First floor addition for a three bedroom dwelling.

Building 3 (Boyle Street frontage)

Part Two part three storey building with basement parking consisting of:

Basement - six parking spaces, plant, storage and lift

Ground Floor - Three bedroom dwelling

First Floor - Three bedroom dwelling

Building 4

Part two part three storey building made up of two three bedroom mirrored dwellings adjacent to each other consisting of:

Lower Ground 2 - master bedroom

Lower Ground 1 - two double garage basement parking and two bedrooms

Ground Floor - Open plan living dining and kitchen with attached balcony

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 5.10 Heritage conservation
Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Local Environmental Plan 2013 - 6.12 Essential services
Manly Development Control Plan - 3.1 Streetscapes and Townscapes
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 3.6 Accessibility
 Manly Development Control Plan - 4.1.1 Dwelling Density, Dwelling Size and Subdivision
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	<p>Lot 1 DP 115705 , 12 Boyle Street BALGOWLAH NSW 2093</p> <p>Lot D DP 335027 , 307 Sydney Road BALGOWLAH NSW 2093</p>
Detailed Site Description:	<p>The subject site consists of two (2) allotments located on the southern side of Sydney Road and the eastern side of Boyle Street.</p> <p>The site is irregular in shape with a frontage of 15.23m to Boyle Street and 3m to Sydney Road. The site has a total surveyed area of 1755.9sqm.</p> <p>The site is located within the R1 General Residential zone and accommodates a single storey heritage listed building on the lot fronting Sydney Road and a two storey building fronting Boyle Street.</p> <p>The site generally slopes from north to south and includes a total crossfall of 6.4m.</p> <p>The site is landscaped with lawns, small shrubs and trees. The rear of the lot fronting Sydney Road is terraced with retaining walls.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a variety of different residential uses including two and three storey residential flat buildings and one and two storey dwelling houses and dual occupancies.</p>

Map:



SITE HISTORY

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

DA2019/0081 - Demolition works and construction of residential accommodation - This application was amended to preserve views from 16 Boyle Street. The amendments were re-notified until 28 September 2019 - Further minor amendments were received to ensure appropriate waste management and amended finishes and 110mm additional setback of the first floor addition to the heritage building. These amendments were not required to be re-notified consistent with the DCP provisions.

DA2018/0355 - Demolition works and construction of residential accommodation - This application was similar to the one currently proposed - This application was withdrawn after Council raised concerns with the loss of views and insufficient design for privacy - Councils Heritage Officer raised no objection to this application

PLM2017/0171 - Demolition works and construction of residential accommodation - This application was the original design of the one currently proposed. Councils Heritage Officer raised no objection - Issues were raised with regards to setbacks privacy and excavation - These have been adequately addressed in the current application.

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 Matters for Consideration'	Comments
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

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 46 submission/s from:

Name:	Address:
Nicolas Chamberlain	19 Boyle Street BALGOWLAH NSW 2093
Mr Peter Raymond Stempel	14 Boyle Street BALGOWLAH NSW 2093
Mr Tuukka Antti Aslakka Salonen Ms Hanna Marjukka Maki- Hokkonen	1 / 305 Sydney Road BALGOWLAH NSW 2093
Mrs Margaret Elizabeth Carlin	12 / 299 Sydney Road BALGOWLAH NSW 2093
Mr Peter Charles McDonald Mrs Tannis Jeanne McDonald	19 / 299 Sydney Road BALGOWLAH NSW 2093
Mrs Nancye Patricia Kent- Vote Mrs Rosemary Caden	23 Boyle Street BALGOWLAH NSW 2093

Name:	Address:
Mr Edward Tracogna	1 Ponsonby Parade SEAFORTH NSW 2092
Mr Douglas Edward Warburton Mrs Margaret Ann Warburton	25 Boyle Street BALGOWLAH NSW 2093
Mr Peter Norton Bramich	3 Burilla Avenue NORTH CURL CURL NSW 2099
Mrs Ella Maree Miles	21 Iluka Avenue MANLY NSW 2095
Ms Joan Barbara Altwasser	12 Belgrave Street MANLY NSW 2095
Andy Rea	2 / 10 Boyle Street BALGOWLAH NSW 2093
Mrs Faye Barrack	2029 Pittwater Road BAYVIEW NSW 2104
Ricki Fitzgerald	303 Sydney Road BALGOWLAH NSW 2093
Mrs Hania Isobel Norman	17 A Seaforth Crescent SEAFORTH NSW 2092
Wendy Duffy	1 Florida Street THE ENTRANCE NORTH NSW 2261
Ms Chantal Marie Gilroy Mr Adrian Frederick Slater	6 Boyle Street BALGOWLAH NSW 2093
Ms Helen Lesley Martin	4 Krui Street FAIRLIGHT NSW 2094
Ms Julie Ann Oates	111 Griffiths Street BALGOWLAH NSW 2093
Craig Jupp	16 / 228 - 232 Condamine Street MANLY VALE NSW 2093
Mrs Bronwen Joan Beale	2 / 83 Wanganella Street BALGOWLAH NSW 2093
Mr Trevor Stephen Easterbrook	307 Sydney Road BALGOWLAH NSW 2093
Ms Catherine Suzanne Kell	2 / 305 Sydney Road BALGOWLAH NSW 2093
Mr Rick Harrison Mrs Nerida Jane Harrison	42 Bungaloe Avenue BALGOWLAH NSW 2093
Ms Claire Olive O'Dwyer	3/4A Boyle Street BALGOWLAH NSW 2093
Miss Julie Werner	7/4A Boyle Street BALGOWLAH NSW 2093
Mrs Maria Teresa Gorecki	12 / 4 A Boyle Street BALGOWLAH NSW 2093
Elizabeth Kender	13 Boyle Street BALGOWLAH NSW 2093
Mrs Elizabetta Ponti Mr Geoffrey Robert McSeveny	5 / 10 Boyle Street BALGOWLAH NSW 2093
Mrs Susan Joy Jans	24 White Street BALGOWLAH NSW 2093
Ms Mary Anne Slavich	15/4A Boyle Street BALGOWLAH NSW 2093
Ms Maureen Delma Margaret Reddie	1 / 2 B Boyle Street BALGOWLAH NSW 2093
Howard Taylor	11 Boyle Street BALGOWLAH NSW 2093
Anonymous	N/A
Ms Patricia Clare Winston	5/4A Boyle Street BALGOWLAH NSW 2093
Ms Lynne Janus Campbell	1 / 4 Boyle Street BALGOWLAH NSW 2093
Mr Robert James Mellor	3 / 10 Boyle Street BALGOWLAH NSW 2093
Mrs Elvira Antoinette Nicolarakis Ms Vanessa Nicolarakis	16 Boyle Street BALGOWLAH NSW 2093
Planning Direction Pty Ltd	PO Box 607 PARRAMATTA NSW 2124

Name:	Address:
Mrs Jane Kathleen McKie	8 Boyle Street BALGOWLAH NSW 2093
Outlook Planning & Development	Po Box 8 BERESFIELD NSW 2322
Suburban Town Planners	C/- Melissa Neighbour Po Box 685 MANLY NSW 1655
Mr Lincoln John Courtney	1/517-519 Sydney Road BALGOWLAH NSW 2093
Lisa Chandler	8/19 Rocklands Road WOLLSTONECRAFT NSW 2065
Mr Casimir Rohan Dickson	303 Sydney Road BALGOWLAH NSW 2093
Dr Jeremy Guy Thompson	2 Bate Avenue ALLAMBIE HEIGHTS NSW 2100

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

- **Heritage Impact 12 Boyle Street and 303-307 Sydney Road**
- **Notification sign**
- **Inconsistencies with Manly LEP 2013 and Manly DCP 2013**
- **No owners consent from adjoining properties**
- **Amenity**
- **Traffic and parking Impact**
- **Destruction of sandstone wall**
- **Overdevelopment**
- **Sydney Road Access**
- **SEPP 65 Design Quality of Residential Apartment Development and Permissibly**
- **Sewer Impact**
- **Protection of green space**
- **Character/Streetscape impact**
- **Landscaping height impact on 10 Boyle Street**
- **Stormwater/runoff**
- **Construction impacts**
- **Inadequacy of plans and geotechnical report**
- **Trees**
- **Floor Space Ratio**
- **Watercourse**
- **Waste storage**
- **In support**

The matters raised within the submissions are addressed as follows:

- **Heritage Impact 12 Boyle Street and 303-307 Sydney Road**
Comment:
The statement of heritage impact commissioned by the objector was provided to Councils Heritage officer to consider in their assessment. Councils Heritage Officer has assessed the proposal and found it to be a satisfactory response to the site. The detailed assessment is below.
- **Notification sign**
Inadequate size and detail of proposed development. In place for inadequate time frame.
Comment:
The notification sign is standard across the Northern Beaches LGA. The applicant has confirmed the placement of the notification sign. Objections were accepted outside of the

notification period. It is considered all objectors were provided with adequate time to submit objections.

- **Inconsistencies with Manly LEP 2013 and Manly DCP 2013**

Comment:

All non-compliances and relevant policy objectives have been considered below. The assessment of the non-compliances has found the development to be satisfactory within the locality.

- **No owners consent from adjoining properties**

Comment:

It is noted the development includes a fence on the boundary. A condition is recommended requiring all development be located entirely within the property boundaries.

- **Amenity**

Comment:

Amenity impacts have been considered below with regard to clause 3.4 Amenity (Views, Overshadowing, Overlooking/Privacy, Noise). This assessment has found that the development will retain a reasonable level of amenity within the locality.

- **Traffic and Parking Impact**

Comment:

Councils Traffic Engineer has assessed the design of the proposal and is satisfied. The proposed parking exceeds the requirements of the Manly DCP 2013. It is not considered reasonable to enforce a greater parking rate than required. The proposed parking and driveway design will not have any unreasonable impacts within the locality.

- **Destruction of sandstone wall**

Comment:

No consent is granted for the developer to carry out works on /over the property boundaries. A condition of consent is recommended to ensure compliance with this.

- **Overdevelopment**

Comment:

A number of objections raise the non-compliance with dwelling density as indication that the proposed built form would result in an overdevelopment of the site. The development complies with the floor space ratio permitted on this site. This indicates that the total floor area proposed by the development can be reasonably expected on this site. As such it is not considered that the proposal is an overdevelopment of the site. The non-compliance with the density control has been addressed below and found to be consistent with the objectives of the control. The non-compliances with the other controls have also been considered and are supported based on the objectives of the controls being achieved as discussed within this report.

- **Sydney Road Access**

Comment:

The Sydney Road Access and right of carriageway arrangements have been discussed below in detail. In summary the proposal does propose any development within the 305 Sydney road access handle. As such owners consent is not required by 305 Sydney Road. The use of the right of carriageway is subject to its own private rights that does not impact on the ability to grant

development consent. Councils traffic engineer has assessed the functionality of this access and is satisfied with the arrangements.

- **SEPP 65 Design Quality of Residential Apartment Development and Permissibly**
Comment:
 As is discussed within this submission, the development is made up of four part three storey buildings containing two dwellings each. The application of SEPP 65 requires the residential flat building be at least three storeys and contain four or more dwellings. This policy also specifies *If particular development comprises development to which subclause (1) applies and other development, this Policy applies to the part of the development that is development to which subclause (1) applies and does not apply to the other part.* Therefore as no part of any proposed building meets the threshold, this policy does not apply. In this regard it is acknowledged that the development does not neatly fit any definition of residential accommodation within the Manly LEP 2013. However, it is considered that the development most closely fits the definition of multi dwelling housing. This is a permissible use within this zone.
- **Sewer Impact**
Comment:
 A condition has been recommended to require the application be submitted to Sydney Water for approval.
- **Protection of green space**
Comment:
 The development provides greater than required landscaped areas and a detailed landscape plan. The proposal will maintain adequate green space on the site.
- **Character/Streetscape impact**
Comment:
 The development has been assessed below with regards to the objectives of Clause 3.1 Streetscape and Townscapes of the Manly DCP 2013 and found to be a satisfactory response to the site and streetscape of the locality.
- **Landscaping height impact on 10 Boyle Street**
Comment:
 The landscaping to the south of the development has been assessed below and is recommended to be amended by way of condition to a maximum of 4m in height to ensure the preservation of views. The landscaping subject to the condition will not have an unreasonable impact on the neighbouring properties.
- **Stormwater/runoff**
Comment:
 Councils Development Engineer has assessed the stormwater design and is satisfied the development can comply with the requirements, subject to conditions.
- **Construction impacts**
Comment:
 Councils standard conditions of consent controlling construction hours have been included in

the recommendation to ensure no unreasonable impacts during construction. Further conditions have also been recommended to ensure compliance with the geotechnical report and require dilapidation reports to control and manage any impacts.

- **Inadequacy of plans and geotechnical report**

Comment:

The submitted plans and reports are adequate to conduct an assessment of the application. In particular, the geotechnical report is adequate to demonstrate that the development can be carried out.

- **Trees**

Comment:

Councils Landscape Officer has assessed the tree removal and the landscape design and is satisfied with the development. A condition is recommended to ensure no consent is granted for the pruning of trees on adjoining properties.

- **Floor Space Ratio**

Comment:

The plans were amended to include a compliant floor space ratio. It is not accepted that the access handle of 305 Sydney Road should be excluded from the site area. This area forms part of the lot and the development is not prohibited by the Manly LEP 2013 on this land.

- **Watercourse**

Comment:

There is no known watercourse running through the site nor is the site mapped as an area of flood risk within the most recent flood study. The stormwater design is adequate to ensure no unreasonable impacts to lower level properties.

- **Waste Storage**

Comment:

The waste storage areas have been amended to the satisfaction of Councils Waste Officer. The proposal will provide for appropriate waste management on the site.

- **In support**

Comment:

Nine objections were received in support. The objections in support were mainly due to provision of smaller size garden style dwellings in this area.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	No objections subject to conditions to ensure compliance with the National Construction Code/Building Code of Australia.
Landscape Officer	The landscape component of the proposal is acceptable subject to the

Internal Referral Body	Comments
	<p>protection of existing trees and vegetation, and completion of landscaping.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types, and specifically: 3.3.1 Landscaping Design; 3.3.2 Preservation of Trees or Bushland Vegetation; and 4.1.5 Open Space and Landscaping.</p> <p>A Landscape Plan is provided with the development application, and this satisfies the requirements of Manly DCP2013, subject to conditions.</p> <p>A Arboricultural Impact Assessment is provided with the application, and this satisfies the requirements of Manly DCP2013, subject to conditions.</p>
NECC (Development Engineering)	<p>The proposed level of the driveway at boundary is RL 45.14 - 45.18 on Boyle Street.</p> <p>The existing level is about RL 44.70 on the footpath next to No. 10 Boyle Street.</p> <p>It is about 450 mm height difference between the proposed driveway and existing footpath.</p> <p>The internal driveway level shall be dropped to match Council's existing footpath level.</p> <p>In this regard, Development Engineering has no objection to the application subject to the following conditions of consent.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>The proposal has been referred to Heritage as the site includes a heritage listed item at 307 Sydney Road - a part of the Group of houses, 303-307 Sydney Road Balgowlah - in Schedule 5 of Manly LEP 2013, and a contributory item 12 Boyle Street.</p>
	Details of heritage items affected
	<p>Details of the heritage item - Group of houses -, as contained within the Manly Heritage Inventory, is:</p> <p><u>Statement of significance:</u> Major significance as a fine example of thirties modern style architecture. Example of P&O style modern functionalist style.</p> <p><u>Physical description:</u> Generally intact example of modern style architecture in rendered</p>

Internal Referral Body	Comments		
	<p>brick with flat roof. Significant and typical elements include the strong horizontal elements, notably bands of render; original glazing in fine ledlight; curvilinear form; entry porch and low front fence. The heritage dwelling at 307 Sydney Road, is a single storey dwelling with rendered and painted masonry.</p> <p>12 Boyle Street is a Federation cottage of the 1920s, with high aesthetic values, maintaining both internal and external intact heritage fabric.</p>		
	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		
	<p>The proposal seeks consent for demolition of 12 Boyle Street and construction of 3 new buildings and a second floor extension to the heritage listed item at 307 Sydney Road.</p> <p>The amended plans have been reviewed. The design of the new work can be read as distinct from the heritage fabric, in a manner that supports the heritage values and has minimal impact on the heritage item. However, this can be enhanced by ensuring that the proposed second floor extension (recessed external walls, including all facades) have matching wall finish to the heritage item at 307 Sydney Road. This will allow the original building and its fabric to be read in its single storey form and minimise the impact upon the heritage item.</p> <p>It is considered that a greater separation between the heritage item at 307 Sydney Road and the new building to the north (units 5&8) would be preferable, to retain the heritage curtilage to a degree and allow the heritage item to be distinguished and read as part of the listed heritage item 'Group of Houses'.</p> <p>The application is acceptable on heritage grounds, subject to the imposition of conditions, requiring a photographic survey to be prepared for 12 Boyle Street; a photographic archival recording to be prepared for 307 Sydney Road; the wall finish to all facades of</p>		

Internal Referral Body	Comments
	<p>the second floor extension should match the wall finish of the heritage listed dwelling at 307 Sydney Road.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p> <p>Further Comments</p> <p>COMPLETED BY: Oya Guner, Heritage Advisor</p> <p>DATE: 26 November 2019</p> <p><u>Planning Comments</u></p> <p>It is acknowledged the a further setback is preferable. However, given the current design has been found to be acceptable and meets the relevant objectives it is not considered reasonable to request further amendments. The recommended conditions requiring photographic records have been amended to ensure the they are specific to each building.</p>
Traffic Engineer	<p><u>Traffic Comment on revised plan TRIM No.2019/497239:</u> The proposed amendments do not alter traffic and parking, therefore no objection is raised on the proposal on traffic grounds.</p> <p><u>Traffic Comments:</u> The proposal is for the construction of a residential development across the consolidated allotment incorporating two driveways accessing to Sydney Road and Boyle Street. The development incorporates 8 apartments / townhouses with both basement and at-grade off street providing a total of 17 parking spaces.</p> <p>Traffic generating from the proposed development is considered minimal and will not significant impact on road network, and the parking spaces provided in the proposal complies with the requirements which is satisfactory.</p> <p>Reviewing the traffic report provided by the applicant in support of the traffic and parking aspects of the proposal, no objection is raised on the proposal.</p>
Waste Officer	<p>Proposal for waste facilities as shown on Heritage Markup Change Compiled - 2109-11-15 is acceptable subject to conditions below,</p> <p><u>Planning Comment</u></p> <p>The plans referred to have been incorporated into the main plans set and included as consent documents.</p>

Internal Referral Body	Comments

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.
Concurrence – NSW Roads and Maritime Services (s100 – Dev. on proposed classified road)	The application was referred to RMS for concurrence. The RMS raised no objection to the proposal subject to the conditions of consent. The conditions have been included in this recommendation to ensure compliance.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP 65 - Design Quality of Residential Apartment Development

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

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

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

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

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

As previously outlined the proposed development is for the erection of four two and three storey buildings containing two dwellings each. The buildings do not meet the application of the policy above as they do not contain four or more dwellings. Furthermore, it is considered that the development most accurately fits the definition of multi dwelling housing

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 981179M_02 dated 26 July 2019).

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

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Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.7m	14.1%	No
Floor Space Ratio	FSR: 0.6:1 (1053.5sqm)	FSR: 0.582:1 (1021.2sqm)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.7m
Percentage variation to requirement:	14.1%



Source: Height Limit Analysis prepared by Roberts Day dated 24/01/2019

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

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:

Clause 4.3 – Height of Buildings 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.

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) 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, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

"sufficient environmental planning grounds exist to justify the variation including topography of the land which makes strict compliance more difficult to achieve and the increased amenity afforded by the breaching clerestory and pergola elements.

Further, the compatibility of the proposed building height with the height and form of surrounding development, the developments compliance with the objectives of the height standard and the general paucity of adverse environmental impact also give weight to the acceptability of the variation sought."

In this regard, the applicant's written request has demonstrated that the proposed development is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 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 Height of Buildings development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The breach of the proposed building height is limited to minor roof elements. The breach due to building 3 fronting Boyle street is minor and limited to 150mm-200mm of the roof. These elements will not result in a building height that is inconsistent with the locality. The breach due to building 4 is limited to the south eastern corner of the parapet. The breach is a result of the steep slope of the lot and is limited to a small section of the roof. The breach will not be visible from the street and will not result in a development that is inconsistent with the desired streetscape of the locality. The design of the buildings including the roof forms are responsive to the existing heritage building on the site and represent a roof form that is consistent within the locality. The proposal is consistent with this objective.

b) to control the bulk and scale of buildings,

Comment:

The proposal is consistent with the maximum permitted floor space ratio of the site and incorporates suitable articulation and varied building materials to reduce the bulk and scale of the building. The proposal is of a suitable design to ensure no unreasonable bulk and scale within the locality.

c) to minimise disruption to the following:

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

(iii) views between public spaces (including the harbour and foreshores),

Comment:

The views lost as a result of the development have been assessed in detail below. In summary the view sharing was found to be reasonable. Furthermore the view loss is not a result of the building height variation.

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

Comment:

The proposal has been assessed below with regards to solar access and found to maintain a reasonable level of solar access to the neighbouring properties private open spaces habitable rooms. In particular, the development provides adequate physical separation to maintain a reasonable level of solar access.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

Not applicable.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

The underlying objectives of the R1 General Residential zone:

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

Comment:

The proposal will provide additional housing on the site to provide for the housing needs of the community.

It is considered that the development satisfies this objective.

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

Comment:

The proposal will provide two and three bedroom dwellings in a format that is convenient to a variety of demographics. The proposal will add to the variety of housing types and densities within the area.

It is considered that the development satisfies this objective.

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

Comment:

Not applicable.

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

Clause 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 may be assumed by the Local Planning Panel.

5.10 Heritage conservation

This clause requires the following:

The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.

Councils heritage officer has carried out a detailed assessment of the impact on the existing heritage building, including a site inspection, and has found the proposed development to have an acceptable impact on the heritage significance of the item, subject to conditions of consent.

With regards to the objectives of this clause the proposed alterations to the heritage building is of an acceptable design, subject to conditions, to conserve the the heritage significance of the heritage item including associated fabric, settings and views. The existing building at 12 Boyle Street has also been considered in the assessment, including a site inspection. The demolition of this building was found to be acceptable subject to conditions requiring a Heritage Photographic Survey. Councils Strategic and Place Planning Department did not consider the building of such significance to warrant heritage listing.

6.1 Acid sulfate soils

The development is located within class 5 acid sulfate soils. This clause specifies development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works. In this regard the following works require consent

"Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land."

The land is not located below 5m AHD as such development consent is not required under this clause.

6.2 Earthworks

This clause requires the following matters are considered in accordance with clause 6.2(3):

(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality

of the development,

Comment:

The geotechnical assessment has found that the development is not likely to disrupt the water table of the locality or result in soil instability. A condition is recommended to require compliance with the recommendations of the geotechnical report. The site is not identified as within a flood affected or waterway area and compliance with the conditions of consent will ensure stormwater is appropriately disposed of. The proposal will not have any unreasonable impacts on drainage patterns.

(b) the effect of the development on the likely future use or redevelopment of the land,

Comment:

The proposed excavation is for a single basement level. The excavation has been suitably minimised to ensure no unreasonable impact on the likely future redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both,

Comment:

There is no evidence of site contamination as discussed under SEPP 55. No significant fill using external material is proposed.

(d) the effect of the development on the existing and likely amenity of adjoining properties,

Comment:

The excavation will not impact on the amenity of the adjoining properties in the long term. Councils standard conditions of consent will ensure excavation works are limited to hours that have been deemed as reasonable across the Northern Beaches LGA. The geotechnical report also includes recommendations to ensure vibration does not exceed industry standards. A condition has been recommended requiring compliance with this report.

(e) the source of any fill material and the destination of any excavated material,

Comment:

The proposal will reuse excavated material as fill and for planter beds. The excess excavated material is identified within the waste management plan as being recycled at Benedict Recycling Belrose .

(f) the likelihood of disturbing relics,

Comment:

The existing site is highly disturbed and altered. The development is not likely to disturb relics.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,

Comment:

The proposal is not in close proximity to any waterway or environmentally sensitive area. Subject to

compliance with the conditions of consent the proposal will not have any unreasonable impact on any waterway, drinking water catchment or environmentally sensitive area.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:

The geotechnical report recommendations are appropriate to avoid, minimise and mitigate the impacts of the development. A condition has been included requiring compliance with the recommendations within this report.

Conclusion

The matters within 6.2(3) have been considered and subject to conditions, no matters that warrant the refusal of the application have been identified.

6.4 Stormwater management

The following matters are considered in accordance with clause 6.4 (3):

(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

Comment:

The proposal includes suitable landscaped areas to maximise water infiltration on site. Subject to the conditions of consent the development will dispose of water run-off from non-permeable surfaces appropriately.

(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

Comment:

The development includes stormwater detention and suitable stormwater disposal. Stormwater use as an alternative is not practicable in this circumstance.

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Comment:

The proposal subject to the conditions of consent with avoid significant adverse impacts of stormwater runoff on adjoining properties, native bushland or receiving waters.

Conclusion

The above matters have been considered and no matters that warrant the refusal of the application have been identified.

6.9 Foreshore scenic protection area

This following matters are considered in accordance with clause 6.9(3) Foreshore scenic protection area:

(a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,

Comment:

The development is located on the edge of the foreshore scenic protection area and will not overshadow the foreshore or result in any unreasonable loss of views from a public place to a foreshore.

(b) measures to protect and improve scenic qualities of the coastline,

Comment:

The proposal is of an adequate design to protect the scenic qualities of the coastline.

(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,

Comment:

The development is located in close proximity to services and public facilities and is a significant distance from the foreshore. The development is suitable for its location.

(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

Comment:

The proposal will not result in conflict between land-based and water-based coastal activities.

Conclusion

The above matters have been considered and no matters that warrant the refusal of the application have been identified.

6.12 Essential services

This clause requires the consent authority to be satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,*
- (b) the supply of electricity,*
- (c) the disposal and management of sewage,*
- (d) stormwater drainage or on-site conservation,*
- (e) suitable vehicular access.*

Comment:

The development subject to the conditions of consent will have the above services available.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1755.9sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density 1 unit/250sqm: 7 dwellings	8 dwellings	14.3%	No
	Dwelling Size 3 Bedroom 90sqm 2 Bedroom 70sqm	Dwelling Size 3 bedrooms: 118sqm- 153sqm 2 Bedrooms: 84sqm- 164sqm	N/A	Yes
4.1.2.1 Wall Height (307 Sydney Road in order of buildings north to south)	Building 1 North: 6.5m (based on gradient 0) East: 6.5m (based on gradient 0) West: 6.5m (based on gradient 0)	Building 1 North: 6.2m - 6m East: 6.4m West: 5.9m-6m	N/A	Yes
	Building 2 East: 6.6 (based on gradient 1:60) West 6.5 (based on gradient 0)	Building 2 East: 6.8m - 7.1m West: 6.8m - 7.1m	3%-16% 4.6%- 9.2%	No No
	Building 4 East: 8m (based on gradient 1:4) West: 7.5m (based on gradient 1:6)	Building 4 East: 5.3m - 8.6m West 4.8m - 7.4m	7.5% N/A	No Yes
4.1.2.1 Wall Height (12 Boyle Street)	Building 3 North: 6.7m (based on gradient 1:30) South: 6.5m (based on gradient 0)	Building 3 North: 6.2m - 7m South: 7.8m	4.5% 20%	No No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	1.5m	N/A	Yes
	Parapet Height: 0.6m	1m	40%	No
4.1.4.1 Street Front Setbacks	307 Sydney Road - 6m 12 Boyle Street - 4.5m	307 Sydney Road - Battleaxe lot - Complies 12 Boyle Street: Building: 4.47m Balcony: Ground 3.37m- First 3.58m	N/A 0.6% 25%- 20.4%	No No
4.1.4.2 Side Setbacks and Secondary Street Frontages (In order of buildings north to south)	Building 1 (based on wall height) North 2.1m East: 2.1m West: 2m	Building 1 North: 6.27m East 3.51m - 1.25m West: 2.5m	N/A 40.5% N.A	Yes No Yes

	Building 2 East: 2.4m - 2.3m West: 2.1m - 2.3m	Building 2 East: 1.79m West: 1.15m	25%-22% 45%-50%	No No
	Building 3 North: 2.1m - 2.3m South: 2.6m	Building 3 North: 2.7m - 2.05m South: 3.9m-4.7m	10.8% N/A	No Yes
	Building 4 East: 1.8m - 2.9m West 1.6m - 7.4m	Building 4 East: 1.2m - 2.5m West 1.2m - 7.4m	43%- 13.8% 66%-0%	No No
4.1.4.2 Side Setbacks and Secondary Street Frontages	Windows: 3m	1m	66%	No
4.1.4.4 Rear Setbacks	8m	8m Ground floor planter 7m	12.5%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (965.7sqm)	36.7%(354sqm at ground level+291.6sqm above ground=645.6sqm)	33%	No
	Open space above ground 40% of total open space (258.2sqm)	45.2% (291.6sqm)	12.9%	No
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (225.96sqm)	48% (313.4sqm)	N/A	Yes
	3 native trees	Nil of the species specified.	100%	No
4.1.5.3 Private Open Space	12sqm per dwelling	Unit 1 12sqm Unit 2 12sqm Unit 3 16sqm Unit 4 31.8sqm Unit 5 43.3sqm Unit 6 16sqm Unit 7 29.5sqm Unit 8 16sqm	N/A	Yes
Schedule 3 Parking and Access	Residential 12 Visitor 2 <i>(In LEP Residential Zones and all other Zones except LEP Business Zones 1 resident parking space for each dwelling (irrespective of number of bedrooms), plus (8) 0.2 resident parking spaces for each 2 bedroom dwelling, plus (0.2) 0.5 resident parking space for each 3 (or more) bedroom dwelling,</i>	Residential 15 Visitor 2	N/A	Yes

	and plus (3.5) 0.25 visitor parking space for each dwelling (irrespective of number of bedrooms).(2))			
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***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.6 Accessibility	No	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	No	Yes
4.1.1.1 Residential Density and Dwelling Size	No	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Description of non-compliance

The Manly DCP 2013 permits front boundary walls to a maximum height of 1m. The development includes a masonry front boundary wall at a height of 0.9m to 1.3m.

Merit consideration:

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

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

Comment:

The proposed wall is a retaining wall to support vegetation on the front boundary. Furthermore the wall is consistent with nearby examples of fencing within the street. The proposed front boundary wall will provide for an attractive frontage that is appropriate within the streetscape. The proposed parking will not be visible from the street frontage and will therefore have no impact on the street.

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

Comment:

The proposal will not be visually prominent from Sydney Road and will not impact on this streetscape. Due to the slope of the land the Boyle street frontage will present as a two storey building to the higher side of the street adjacent to the single storey dwelling and three storeys to the lower side adjacent to the three storey residential flat building. The development is consistent with the scale within the existing streetscape. The front setback is discussed below in detail. This assessment finds that building is generally consistent with the setbacks within the street and the projection due to the balconies will have no unreasonable impact on the streetscape of the locality. With regards to the parapet roof form, this

design is in response to the heritage building on the rear lot at 307 Sydney Road. While the streetscape is predominantly made up of pitched roofs there is an example of a parapet within the existing street at 4 Boyle Street. The proposed development is of a design that will complement the streetscape and the existing development on the site.

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

Comment:

The proposed front wall will provide landscaping on the street frontage and is satisfactory in this circumstance.

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

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

The proposal will result in overshadowing of the adjoining and nearby properties. The most severely affected properties are 10 Boyle Street, 14 Boyle Street, 16 Boyle Street, 305 Sydney Road and 8 Boyle Street.

Merit consideration:

The development is considered against the underlying Objectives of the Control as follows:

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

Comment:

The proposed development is of a suitable design to provide equitable access to light and sunshine within the locality.

The property at 305 Sydney Road east of the site has living spaces and principal private open space area orientated to the north-east. These spaces will receive solar access from the morning to mid afternoon of the winter solstice.

The property at 16 Boyle Street will receive solar access in the early morning then from midday onwards during the winter solstice. The property at 14 Boyle Street will receive sunlight from the late morning to the afternoon of the winter solstice. The sunlight retained to these properties is considered to be reasonable.

The residential flat building at 10 Boyle Street will lose all solar access to the ground floor. This is a result of the development on the Boyle Street frontage. This section of the proposed development includes a southern side setback of 4.75m far greater than requires to minimise the loss of solar access. The design and setback of this building is considered reasonable within the locality. The upper levels will retain solar access from late morning to the afternoon of the winter solstice. The design of the proposal will retain equitable access to sunlight to this property. Please note: the shadow diagrams

represent a worse case scenario due to the time of year they are modeled. In this scenario the northern facing ground floor windows of 10 Boyle Street are only just in shadow during midday and the afternoon of the winter solstice. These at other times in the year.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

As discussed above the development is of a suitable design to allow adequate sunlight to penetrate private open spaces and windows to living spaces/habitable rooms of both the development and the adjoining properties.

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

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

Comment:

The proposal provides increased setbacks to the southern boundaries to allow for the penetration of sunlight to the properties to the south. The proposal is also suitably modulated to allow sunlight to penetrate the units within.

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

3.4.2 Privacy and Security

Merit consideration:

A number of objections raised concerns with regards to impacts on privacy. The development is considered against the underlying Objectives of the Control as follows:

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

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

Comment:

The development is designed to ensure private open spaces are orientated to the front and rear of the site. The private open spaces at ground level incorporate landscaping to provide separation from the boundary. The private open spaces on the upper levels, where appropriate incorporate planter boxes and provide appropriate setbacks to minimise the loss of privacy of the adjacent dwellings and private open spaces. In particular, Building 1 (northern) and Building 4 (southern) provides adequate setbacks to the nearby properties to ensure no unreasonable privacy impacts. Building 4 also includes a planter box to prevent downwards overlooking and screening to the middle floor bedrooms. On the elevations windows are proposed with a high level of privacy screening to ensure no direct views of the adjoining properties. Building 3 includes a small first floor courtyard facing north. This courtyard incorporates screening and planter boxes to minimise overlooking of the property to the north. The proposed screening will ensure that the windows do not result in any unreasonable overlooking of the neighbouring properties.

The proposal includes an elevated walkway connecting the first floor Unit 7 (above the heritage building) to the lift. This walkway will allow for some overlooking of the private open space of 14 Boyle Street despite the incorporation of a planter box. A condition is recommended requiring a 1.5m privacy screen on the northern edge of this walkway. This will ensure no overlooking occurs from this walkway.

The proposal subject to the conditions of consent will minimise the loss of privacy of the adjacent and nearby development.

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

Comment:

The proposed design will increase the privacy of the site and will maintain a reasonable access to light and air within the locality the outlook of the units is appropriately designed to direct views away from the private open space of the neighbouring properties.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal will encourage passive surveillance of the Boyle Street streetscape and will encourage an awareness of neighbourhood security.

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

3.4.3 Maintenance of Views

Merit consideration:

Objections were received regarding the loss of views from 16, 14 and 10 Boyle Street. With regards to the objections the development is considered against the underlying Objectives of the Control and the views planning principle established by the NSW Land and Environment Court as follows:

Objective 1) To provide for view sharing for both existing and proposed development and existing and

future Manly residents.

Comment:

The assessment below has found that the development will provide for the reasonable sharing of views for the existing nearby development.

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

An assessment of view loss has been undertaken with reference to the Views Principle established by the NSW Land and Environment Court as follows:

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

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:

16 Boyle Street

The views from 16 Boyle Street are from the two first floor southern facing units. Unit 4 gains harbour/ocean views from the bedroom and the living room from a standing position. Unit 3 gains water views and a view of North Head from the southern facing living room and bedroom. The views are gained by overlooking the side boundary and rear boundary of 14 Boyle Street

14 Boyle Street

The views from 14 Boyle Street are gained from a standing position from the ground floor eastern facing rooms and the private open space. The views are highly obscured water views obtained by overlooking the side and rear boundary of 12 Boyle Street.

10 Boyle Street

The views obtained from 10 Boyle Street are lost from the south eastern facing units 3, 6 and 9 obtained from the bedrooms overlooking the side boundary. The views are of North Head and Sydney Harbour.

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

Comment:

16 Boyle Street

The impact to the views from 16 Boyle Street is considered to be devastating. Both units will retain a small water view as demonstrated in the view analysis prepared by Roberts Day. In particular the view of North Head will be lost.

14 Boyle Street

The impact to the views from 14 Boyle Street will be devastating. This property will not retain any views.

10 Boyle Street

The view impact to unit 3 will be devastating this unit will lose its water view from the bedroom. This property does not currently receive a view from the living areas or private open spaces.

The view impact from unit 6 will be minor. This property will lose the views from the bedrooms but will retain expansive water views from the living areas and attached balconies including views of North Head.

The view impact from unit 9 will be minor. This property will lose the majority of views from the bedroom but will retain expansive water views from the living areas and attached balconies including views of North Head.

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:

16 Boyle Street

The views from 16 Boyle Street are gained from overlooking the side boundary of 307 Sydney Road overlooking the roof of the existing single storey building. The views are highly vulnerable to disruption and the view impact is not a direct result of non-compliance. As such the amended design to retain small water views for both units is considered to provide reasonable view sharing in this circumstance

14 Boyle Street

The views from 14 Boyle Street are obtained from overlooking the side boundary of 307 Sydney Road and are obtained from the ground level. The views are highly obscured and highly vulnerable to disruption. The view loss is not a result of non-compliance. The disruption of this views is considered reasonable in this circumstance.

10 Boyle Street

The views from unit 3 are obtained from ground level overlooking the side boundary. The views are not lost as a direct result of non-compliance and are obtained from the bedroom. The disruption of this views is considered reasonable in this circumstance.

The views from Unit 6 and 9 are lost from the bedrooms overlooking the side boundary. These units will retain expansive views from the living areas and attached balconies. The view sharing is reasonable in this circumstance.

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

Comment:

The proposed development is of a reasonable design to minimise the loss of views from the adjacent properties. A submission also mentioned the loss of views from units 2, 5 and 8 at 10 Boyle Street. These balconies are set further to the south of units 3, 6 and 9 and as such will not be unreasonably impacted by this development.

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

3.6 Accessibility

Description of Non-compliance

The Manly DCP 2013 requires 25 per cent of dwellings within residential accommodation containing four or more dwellings be adaptable housing. The proposal does not include any adaptable housing. The applicants accessibility report argues that this clause is not applicable because the development is made up of four separate buildings that do not individually contain four dwellings. However, this clause specifies "within residential accommodation" and does not refer to individual buildings. This justification is not accepted.

Merit Consideration

With regard to the consideration of the variation, the development is considered under the objectives of the control below.

Objective 1) To ensure equitable access within all new developments and ensure that any refurbishments to existing buildings provide improved levels of access and facilities for people with disabilities.

Objective 2) To provide a reasonable proportion of residential units that should be designed to be adaptable and easily modified to promote 'ageing in place' and for people with disabilities.

Objective 3) To highlight consideration of access issues early in the development design process.

Objective 4) To continue improving understanding and awareness of access issues for people with disabilities through a commitment to implementation of best practice.

Objective 5) To ensure that the public domain, including public domain in new developments provides

connectivity, legibility, flexibility and consistency to allow for equitable and safe access for all people.

Comment:

The proposal does not provide a reasonable proportion of residential units that are designed to be adaptable and easily modified to promote 'ageing in place' and for people with disabilities. In particular a number of submissions in support of the application were in support as the development would meet a demand for people who wish to downsize in the later stages of life. The provision of no adaptable units is inconsistent with the objectives of the clause. A condition is recommended requiring the internal floor plans be amended to provide for two adaptable units. The development subject to the conditions of consent will be consistent this clause.

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

4.1.1 Dwelling Density, Dwelling Size and Subdivision

Description of Non-compliance

The Manly DCP 2013 requires 250sqm of site area per dwelling. The Manly DCP 2013 permits 7 dwellings on the site. The proposal includes 8 dwellings. It is noted that the floor space ratio (gross floor area to site area) is compliant.

Merit Consideration

With regard to the consideration of the variation the development is considered under the objectives of the control below.

Objective 1) To promote a variety of dwelling types, allotment sizes and residential environments in Manly.

Comment:

The proposal will add to the variety of dwelling types within the locality.

Objective 2) To limit the impact of residential development on existing vegetation, waterways, riparian land and the topography.

Comment:

The proposed development has been assessed by Councils landscape officer and has been found to have no unreasonable impacts on the existing vegetation on the site. The development adequately steps down with the topography and will maintain the topographic landscape. The development is not located near waterways or riparian land.

Objective 3) To promote housing diversity and a variety of dwelling sizes to provide an acceptable level of internal amenity for new dwellings.

Comment:

The proposal adds to the housing diversity of the locality. The proposed units will achieve a high level of

internal amenity including access to light and natural ventilation.

Objective 4) To maintain the character of the locality and streetscape.

Comment:

The proposal is consistent with the maximum permitted floor space ratio on the site. This development standard controls the building density of a site. Compliance with this development standard indicates that the building density is one that could be reasonably expected within the locality. The proposal has been assessed by Councils Heritage Officer and found to be of an appropriate design to maintain the character of the site. The proposal has also been assessed above under clause 3.1 Streetscape and Townscape and found to be of an appropriate response to the existing development on the site and the nearby streetscape.

Objective 5) To maximise the use of existing infrastructure.

Comment:

The proposal will maximise the use of the existing infrastructure. The proposal was also assessed by Councils traffic Engineer and found to have an acceptable impact on the traffic network of the locality.

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

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

The development does not comply with this clause due to the wall height, number of storeys and parapet height. This clause does not contain objectives relevant to this clause but refers to the objectives of 4.3 Height of Buildings of the Manly LEP 2013 as having particular relevance. The objectives of Clause 4.3 Height of Buildings have been assessed above under Clause 4.6. This assessment has found the development to be reasonable within the locality. The proposal is consistent with the relevant objectives.

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

Description of non-compliance

The Manly DCP 2013 requires buildings to be setback in line with the existing building line. The properties on the eastern side of Boyle Street generally provide a 4.5m front setback. The proposal is setback 4.47m to the building and 3.37 to the ground floor balcony and 3.58 to the first floor balcony. In this regard the Manly DCP 2013 allows the following

Projections into the front setback may be accepted for unenclosed balconies, roof eaves, sun-hoods, chimneys, meter boxes and the like, where no adverse impact on the streetscape or adjoining properties is demonstrated to Council's satisfaction.

The Manly DCP 2013 requires an 8m rear setback be provided. The proposal provides an 8m rear setback to the building. However, the planter box to the ground floor (top floor) balcony provides a 7m rear setback.

The Manly DCP 2013 requires buildings be setback from the side boundary a distance equal to 1/3 of the wall height.

Building 1 does not comply with this clause due to the first floor eastern side to the rear of the building. The non-compliance extends for a distance of 7m. The northern and western elevations comply with the setback requirements.

Building 2 does not comply with this clause on the eastern and western elevation due to the first floor. It is noted that initial advice from Councils Heritage Officer was to construct directly on top the existing heritage building to maintain the footprint and character of the existing building. The development is consistent with this advice.

Building 3 (fronting Boyle Street) does not comply with this clause on the northern elevation due to the topmost part of the wall closest to the street.

Building 4 does not comply on the eastern and western elevation due to the projections into the setback extending for 6.5m toward the front of the building. This building is also non-compliant due to a small section of the south eastern corner.

Merit consideration:

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

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

Comment:

The proposed front setback is consistent with the neighbouring properties. The proposed balconies that project into the front setback are unenclosed and add articulation and a sense of depth to the building. The proposed balconies are not considered to have any unreasonable impact on the streetscape of the locality. The projection into the front setback due to the balconies will also not result in any unreasonable impacts on the amenity of the neighbouring properties. The proposal incorporates landscaping within the front setback area to enhance the street edge and maintain the landscape character of the street. The proposal is consistent with this objective.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposal is considered to ensure and enhance local amenity for the following reasons:

- The development has been assessed under clause 3.4.2 Privacy and Security and has been found to be adequately designed to provide privacy within the locality.
- The proposal has been assessed with regards to clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013 and found to maintain an equitable access to light and sunshine within the locality.
- The proposal has been assessed with regards to clause 3.4.3 Maintenance of Views of the Manly DCP 2013 and was found to not have any unreasonable impacts on views within the locality.
- The proposals presentation to the streetscape will maintain a suitable pattern of separation between buildings within the street to maintain the pattern of spaces. The proposal has also been assessed above with regard to clause 3.1 Streetscapes and Townscapes and found to be of an adequate design to respond to the site and streetscape of the locality.
- The proposal has been assessed by Councils Traffic Engineer and was found to be acceptable.

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

Comment:

The absence of any unreasonable impacts on amenity and the presentation to the street is considered to be adequate justification to allow for the flexibility proposed within this application.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal includes extensive tree removal and planting on the site. The proposal has been assessed by Councils Landscape Officer and found to be satisfactory in this circumstance. The proposal incorporates high quality landscaping along the side front and rear boundaries that will soften the bulk of the built form and enhance the natural features of the site.

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

Comment:

Not applicable.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The Manly DCP requires 55% of the site area to be provided as total open space. The proposal provides 36.7% of the site area as total open space. It is noted that the site includes large paved areas for parking and driveways that significantly adds to the separation and sense of openness on the site but due to the use or dimension do not contribute to the total open space area.

The Manly DCP also permits a maximum of 40% of the total open space to be provided as above ground open space. The proposed total open space is made up of 45.2% above ground open space.

The Manly DCP requires three trees of the species specified to be planted on the site. The proposal does not include any of the species specified. The proposal includes extensive plantings on the site.

Merit consideration:

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

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

Comment:

The proposal includes extensive removal of vegetation on the site. The proposal was accompanied by an arborist report for the justification of the tree removal and a detailed landscape plan proposing replacement plantings. Councils landscape officer has assessed the landscaping and is satisfied. The proposal includes appropriate retention and augmentation of the landscape features and vegetation on the site.

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

Comment:

The proposed landscaped area is 48% of the total open space. This exceeds the requirement of 35%. The proposal is considered to maximise soft landscaped areas. The proposed open space at ground level is adequate to service the ground floor allotments. The elevated open space areas are of a suitable design to ensure no unreasonable overlooking. The proposed tree planting is made up of smaller native species and is appropriate in this circumstance.

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

Comment:

The proposal has been suitably designed to maintain the amenity of the locality. This has been discussed in detail above. Submissions have raised concerns over the loss of views due to the trees. The proposed trees on the rear setback are likely to disrupt the views. A condition of consent is recommended requiring the trees between the southern edge of the building and the rear boundary to be amended to a species that reach a maximum height of 4m. This is considered appropriate as the trees will be planted at an approximate RL of 42 and the floor level of the balcony of unit 3 is approximately 47.

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

Comment:

The proposed landscaped area will maximise the water infiltration on the site.

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

Comment:

The proposed landscaping will not result in the spread of weeds.

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

Comment:

The proposed landscape design will maximise the wildlife habitat on the site.

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

4.4.5 Earthworks (Excavation and Filling)

Description of Non-compliance

The Manly DCP 2013 requires development maintain natural ground level within 0.9m of the side boundary. The proposal includes excavation within 0.9m of the side boundary.

Merit Consideration

With regard to the consideration of the variation the development is considered under the objectives of the control below.

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- *Limiting excavation, "cut and fill" and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

Comment

The proposed excavation is a direct requirement of the development and the provision of suitable parking on the site. The development will generally maintain the appearance of the topography sloping

to the south. The proposal was accompanied by a geotechnical report that provided recommendations to ensure the development would not have any unreasonable impacts within the locality. A condition has been included to ensure the development complies with the recommendations of this report.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$66,057 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$6,605,666.

SYDNEY ROAD ACCESS VIA RIGHT OF CARRIAGEWAY

Concern was raised that the development application represents an intensification of use of the existing right of carriageway (one dwelling to two dwellings) on 305 Sydney Road and therefore requires owners consent for the lodgement of the development application. In this regard a development application may be made by the owner of land to which the development application "relates", or by any other person with the consent in writing of the owner of that land: clause 49(1) of the Environmental Planning and Assessment Regulation 2000 ("EPA Regulation"). The land to which a development application "relates" is the land identified in the written development application as the land on which the specified development is proposed to be carried out. In this circumstance there is no development proposed to be carried out on 305 Sydney Road.

The rights of carriageway as between 305 and 307 Sydney Road constitute proprietary rights which are governed by the instruments creating the rights and the law relating to easements. Development consent, of itself, affords no right to the beneficiary of the development consent to interfere with the proprietary rights of those owners against their wishes.

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

In summary, a detailed assessment has been required for the following specific issues:

- Variation to the Height of Buildings development standard - The proposed variation to the development standard was found to be satisfactory and the applicants justification sufficient to demonstrate that compliance with the development standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to support the variation.
- The application has been assessed in accordance with the Manly DCP 2013 and Manly LEP 2013 and has been found to be consistent with the objectives of these documents.
- The application has been assessed in accordance with the views planning principle and found to maintain acceptable view sharing within the locality.

On this basis the application is recommended for approval.

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

RECOMMENDATION

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2019/0081 for Demolition Works and construction of residential accommodation on land at Lot 1 DP 115705, 12 Boyle Street, BALGOWLAH, Lot D DP 335027, 307 Sydney Road, BALGOWLAH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A200 Plan Lower Gound 2 - Revision B	16/08/2019	Roberts Day
A201 Plan Lower Ground 1 - Revision C	12/11/2019	Roberts Day
A203 Plan Ground Floor - Revision C	14/11/2019	Roberts Day
A204 Plan - Level 1 - Revision D	14/11/2019	Roberts Day
A205 Plan - Roof/Site - Revision D	14/11/2019	Roberts Day
A300 Elevation North - Revision B	16/08/2019	Roberts Day
A301 Elevation East - Revision D	14/11/2019	Roberts Day
A302 Elevation South - Revision B	16/08/2019	Roberts Day
A303 Elevation West - Revision B	16/08/2019	Roberts Day
A400 Section AA - Revision B	16/08/2019	Roberts Day
A401 Section BB - Revision B	16/08/2019	Roberts Day
A402 Section CC - Revision B	16/08/2019	Roberts Day
A403 Section DD (Heritage Building) - Revision D	14/11/2019	Roberts Day
A404 Section EE - Revision B	16/08/2019	Roberts Day

A405 Section FF - Revision B	16/08/2019	Roberts Day
A406 Section GG - Revision B	16/08/2019	Roberts Day
A407 Section HH - Revision D	14/11/2019	Roberts Day
A600 Material Board - Revision C	14/11/2019	Roberts Day
A800 Waste Management Site Plan - Revision B	16/08/2019	Roberts Day

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Alterations and additions and construct residential flat building 12 Boyle Street and 307 Sydney Road Balgowlah	3 July 2019	Transport Roads and Maritime Services
Statement of Heritage Impact	January 2019	Heritage 21
Assessment of Traffic and Parking Implications	January 2019	Transport and Traffic Planning Associates
Addendum Letter to Arboricultural Impact Assessment (2517AIA) Reflecting Revised Plans	28 January 2019	Tree Wise Men
Report to Sun Property Ground Australia Pty Ltd on Geotechnical Investigation for Proposed Residential Development at 307 Sydney Road and 12 Boyle Street, Balgowlah NSW	21 December 2018	JK Geotechnics

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
000 Coversheet - Revision D	26/07/2019	Site Image
101 Landscape Plan - Revision G	26/07/2019	Site Image

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. Compliance with Geotechnical Report

The development must be carried out in compliance with all recommendations and requirements of the Geotechnical report *"Report to Sun Property Ground Australia Pty Ltd on Geotechnical Investigation for Proposed Residential Development at 307 Sydney Road and 12 Boyle Street, Balgowlah NSW"* dated 21 December 2018 prepared by JK Geotechnics excluding general advice.

Reason: To ensure the work is carried out in accordance with the supporting documentation.

3. **Prescribed Conditions**

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

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

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

allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged

during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

- (j) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

5. **No Building or Structure to encroach Sydney Road**

All buildings and structures, together with any improvements integral to the future use of the site are wholly within the freehold property (unlimited in height or depth), along the Sydney Road boundary.

Reason: To ensure compliance with RMS requirements

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$66,056.66 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$6,605,666.00.

The monetary 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. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

7. Security Bond

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

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

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

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

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

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

8. **On Slab Landscape Works**

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate,

- i) indicating the proposed method of waterproofing to the concrete slabs and planters to which soil and planting is being provided,
- ii) indicating soil type, plant species, irrigation, services connection, maintenance activity schedule and soil depth compliant with iii) below:
- iii) the following minimum soil depths are required to be provided:
 - 300mm for lawn and groundcovers
 - 600mm for shrubs
 - 1 metre for trees
- iv) certification shall be provided by a structural engineer that the roof garden planter is designed structurally to support the 'wet' weight of landscaping (materials, soil and established planting).

Reason: to ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system, and away from habitable areas.

9. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- o All development (including demolition and fencing) is to be contained wholly within the lot boundaries.
- o The landscaping proposed that reaches a height greater than 4m between the southern most boundary and the proposed building is to be amended to a species that reaches a maximum height of 4m.

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.

10. **On-site Stormwater Detention Compliance**

Certification of Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003 and the concept drawing by Woolacotts consulting Engineers, drawing number SW1-SW3 dated 25/01/2019. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

11. **Pump-Out System Design for Stormwater Disposal**

The design of the pump-out system for Stormwater disposal will be permitted for drainage of hard surfaces areas such as driveways and basement pavement areas only, and must be designed in accordance with AS/NZS 3500. Engineering details demonstrating compliance with this requirement and certified by an appropriately qualified and practising hydraulic engineer.

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

Reason: To ensure adequate provision is made for the discharge of Stormwater from the excavated parts of the site.
Shot

12. **Vehicle Driveway Gradients**

Driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in Council's Minor Works Policy. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure suitable vehicular access to private property

13. **Tanking of Basement Level**

The basement area is to be permanently tanked. Details of the tanking are to be prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Office of Water. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Office of Water are to be complied with and a copy of the approval must be submitted to the Principal Certifying Authority. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements

14. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

(a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and

(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

15. **Vehicle Crossings Application**

A Driveway Levels and Formwork Inspections Application shall be made with Council subject to the payment of the fee in accordance with Council's Fees and Charges. The fee includes all Council inspections relating to the driveway construction and must be paid.

Approval of the application by Council is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

16. **Heritage Photographic Survey**

A black and white photographic survey of the existing building at 12 Boyle Street, in accordance with the guidelines of the Heritage Council, is to be submitted in an unbound report format. The report shall contain:

(a) A front cover marked with:

- (i) the name/location of the property;
- (ii) the date of the survey;
- (iii) the name of the Company or persons responsible for the survey.

(b) A layout plan of the existing building; identifying rooms and features shown in the photographs.

(c) Photographs of the interior, exterior, and streetscape view of the building, labelled to indicate their location in relation to the layout plan and elevations of the building; and a set of negatives. All photographs are to be mounted in acid-free photographic corner mountings and photographs are to be fixed into acid-free corner mounting.

(d) Where colour is a feature of the building (for example, the building features stained glass, leadlight or polychrome brickwork), additional colour photographs (with negatives) are to be included in the photographic survey report.

These documents are to be provided to Council's historical archives.

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

Reason: To provide a historical record of heritage significant works on the site for archival purposes. (DACHEC01)

17. **Recessed external walls to second floor extension with matching finish to the heritage item at 307 Sydney Road**

The second floor extension of 307 Sydney Road is to be recessed for the wall thickness of the original parapet wall, with matching finish to the heritage item at 307 Sydney Road, Balgowlah, and this applies to all facades of the second floor extension.

Details demonstrating compliance are to be submitted to the certifying authority prior to the issue of the Construction Certificate.

Reason: To allow the existing building to be read in its original single storey form and minimise the impact upon the heritage item. (DACHECPCC1)

18. **Heritage photographic archival record**

The following is to be provided on the existing building at 307 Sydney Road:

(a) A layout plan of the existing building; identifying rooms and features shown in the photographs.

(b) Photographs of the interior, exterior, and streetscape view of the building, labelled to indicate their location in relation to the layout plan and elevations of the building; and a set of negatives. All photographs are to be mounted in acid-free photographic corner mountings and photographs are to be fixed into acid-free corner mounting.

These documents are to be provided to Council's historical archives.

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

Reason: To provide a historical record of a heritage item, an example of modern style architecture, prior to the proposed construction of alterations and additions. (DACHECPCC2)

19. **Palm transplantation**

A transplantation feasibility report including a site specific Transplant Method Statement prepared by a professional tree transplant company for the transplantation of the Canary Island Date Palm (Tree 16) and Tree Aloe (Tree 21), is to be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

20. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- o "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- o Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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

21. **Adaptable accommodation requirements**

The internal plans are to be amended to include the provision of two adaptable units in accordance with clause 3.6.3.1 Accessible (Adaptable) Accommodation Requirements of the Manly DCP 2013.

Amended plans demonstrating compliance with this condition are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide a reasonable proportion of residential units that are designed to be adaptable and easily modified to promote 'ageing in place' and for people with disabilities.

22. **Privacy Screen**

A 1.5m privacy screen is to be provided to the northern edge of the elevated walkway connecting the lift to Unit 7 and labelled as "court" on the approved plans.

Reason: To minimise loss of privacy to adjacent and nearby development.

23. **Pre-construction dilapidation survey**

Prior to any construction a photographic survey of adjoining properties (305 Sydney Road including the driveway, 14 Boyle Street and 10 Boyle Street detailing the physical condition of those properties, both internally and externally, including such items as walls, ceilings, roof, structural members and other similar items, shall be submitted to Council/Accredited Certifier prior to the issue of a Construction Certificate. This survey is to be prepared by an appropriately qualified person. The respective owners of the adjoining properties should be asked to confirm that the dilapidation reports represent a fair record of actual conditions.

In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant must demonstrate, in writing, to the satisfaction of Council/Accredited Certifier that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed.

Reason: Protection of adjoining properties

24. **Design and Construction of Gutter and Crossing (Sydney Road)**

The design and construction of the gutter crossing on Sydney Road shall be in accordance with Roads and Maritime requirements. Details of these requirements should be obtained by email to DeveloperWorks.Sydney@rms.nsw.gov.au.

Detailed design plans of the proposed gutter crossing are to be submitted to Roads and Maritime for approval prior to the issue of a Construction Certificate and commencement of any road works.

A plan checking fee and lodgement of a performance bond is required from the applicant prior to the release of the approved road design plans by Roads and Maritime.

Reason: To ensure appropriate construction of infrastructure.

25. **Sight Distances**

Sight distances from the proposed vehicular crossings to vehicles on Sydney Road are to be in accordance with the Austroads Guide to Road Design: Part 4A: Unsignalised and Signalised Intersections (Section 3 – Sight Distance) and AS 2890. Vegetation and proposed landscaping/fencing/wall must not hinder sight lines to and from the vehicular crossings to motorists, pedestrians and cyclists.

Details demonstrating compliance are to be submitted to the certifying authority prior to the issue of the Construction Certificate.

Reason: To minimise traffic hazards.

26. **Waste and Recycling Requirements**

Details demonstrating compliance with Manly Development Control Plan – 4.8 Waste Management, including the required Northern Beaches 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 Manly Development Control Plan – 4.8 Waste Management, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided. (DACWTC01)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

27. **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.

28. **Tree removal**

In consideration of the assessment of tree health and condition, the following existing trees are approved for removal, based on the recommendations of the Arboricultural Impact Assessment report dated March 2018, and the Addendum Letter dated 28 January 2019, both prepared by Tree Wise Men: tree T2, T3, T4, T12, T13, T14, T15, T18, T19, T20 and T22.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

29. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- o Work Health and Safety Act
- o Work Health and Safety Regulation
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)] and
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)]
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005.
- o The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

30. **Property Boundary Levels**

The property boundary levels shall match the existing levels except where modified for the vehicular crossing. The applicant shall design and construct having regard for the existing levels. No approval is granted for any change to existing property alignment levels to accommodate the development. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To maintain the existing profile of the nature strip/road reserve

31. **Vehicle Crossings**

The provision of one vehicle crossing 5.5 m metres wide at Boyle Street in accordance with Northern Beaches Council Drawing No A4-3330/2 NH 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.

32. **Maintenance of Road Reserve**

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety.

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

Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.

Reason: To ensure private and public safety

34. **Tree and vegetation protection**

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

i) all trees and vegetation within the site as identified for retention in the Arboricultural Impact Assessment report dated March 2018, and the Addendum Letter dated 28 January 2019, both prepared by Tree Wise Men (T1), excluding exempt trees under the relevant planning instruments or legislation,

ii) trees proposed for transplanting: T16 and T21,

iii) all trees and vegetation located on adjoining properties, and particularly T5 to T11, and T24,

iv) all road reserve trees and vegetation, including T24 along Boyle Street, and trees along Sydney Road.

B) Tree protection shall be generally undertaken as follows:

i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4, and the recommendations of the Arboricultural Impact Assessment report dated March 2018, and the Addendum Letter dated 28 January 2019,

ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,

iii) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an Arborist. Details including photographic evidence of works

undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,

iv) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,

v) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a Project Arborist on site,

vi) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,

vii) excavation for stormwater lines is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist, to provide for root protection measures,

viii) should either or all of v), vi) and vii) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,

ix) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,

x) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

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

35. **Project Arborist**

A AQF Level 5 Project Arborist, qualified in Horticulture is to be engaged to supervise and certify tree protection works in accordance with AS4970- 2009 Protection of Trees on Development Sites, and in accordance with Attachment D: Tree Protection Requirements and Attachment E: Tree Protection Plan, as documented in the Arboricultural Impact Assessment report dated March 2018, and the Addendum Letter dated 28 January 2019, both prepared by Tree Wise Men.

Details shall be submitted to the Certifying Authority prior to the Occupation Certificate.

Reason: to ensure tree protection is provided and maintained.

36. **Pruning**

No consent is granted for pruning of trees or vegetation on the adjoining properties.

Reason: To retain and protect adjoining vegetation.

37. **Survey**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans. (DACPLE01)

38. **Road Occupancy Licence**

A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Sydney Road during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>

Reason: To minimise impacts on traffic.

39. **Demolition and construction vehicles**

All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Sydney Road.

Reason: To minimise traffic conflicts.

40. **Waste/Recycling Requirements (Materials)**

During demolition and/or construction the following materials are to be separated for recycling – timber – bricks – tiles – plasterboard – metal – concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.
(DACWTE02)

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

41. **Landscape works**

Landscaping is to be implemented in accordance with the landscape plans 000 (C), 101 (E), 501 (A) and 502 (A), as prepared by Site Image, inclusive of the following conditions:

- i) native tree planting shown on the plans shall be planted in ground area containing at least 3m x 3m soil area, and shall be planted at least 3 metres (small trees) or 5 metres (medium to large trees) from any structures or underground utilities
- ii) a total of 21 trees, as scheduled on the landscape plans, shall be planted on site,
- iii) all planting shall conform to the pot sizes as listed on the plant schedule on plan 000 (C).

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the amended landscape plan and the conditions of consent.

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

42. **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.

43. **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.

44. **On-Site Stormwater Detention Compliance Certification**

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council.

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

Reason: To ensure stormwater disposal is constructed to Council's satisfaction. (DACENF10)

45. **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.

46. **Consolidation of Lots or Restrictive Covenant**

Lot D in DP 335027 & Lot 1 in DP 115705 must be consolidated as one (1) allotment and registered on a survey plan (prepared and signed by a Registered Surveyor) with the NSW Land & Property Information Service (NSW Department of Lands). 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 development is not constructed over property boundaries

47. **Garbage and Recycling Facilities**

Door to waste storage area on Boyle St access is to be a minimum of 4200mm clear width to enable any one bin to be removed without having to remove other bins.

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

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

Reason: To prevent pollution of the environment and to protect the amenity of the area. (DACPLF03)

48. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**

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

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

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

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

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

49. **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.

50. **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.

51. **Post-construction dilapidation survey**

On completion of the excavation and building works and prior to occupation of the building, a certificate prepared by the appropriately qualified person to the effect that no damage has resulted to adjoining premises, in particular 305 Sydney Road including the driveway, 14 Boyle Street and 10 Boyle Street, is to be provided to the Principal Certifying Authority.

If damage is identified by the appropriately qualified person which is considered to require rectification, the damage shall be rectified or a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible and prior to an Occupation Certificate being issued.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent. In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant must demonstrate, in writing, to the satisfaction of Council/Accredited Certifier that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed.

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

Reason: Protection of adjoining properties

52. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with Manly Development Control Plan – 4.8 Waste Management.

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

Reason: To ensure waste and recycling facilities are provided. (DACWTF01)

53. **Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled. (DACWTF02)

54. **Positive Covenant for Waste Services**

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

Reason: To ensure ongoing access for servicing of waste facilities (DACWTF03)

55. **Authorisation of Legal Documentation Required for Waste Services**

The original completed request form (Department of Lands standard form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation

Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land. (DACWTF04)

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

56. **Landscape maintenance**

All landscape components are to be maintained for the life of the development. A maintenance program is to be established. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components and species to maintain the landscape theme of the landscape plan.

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

57. **Environmental and priority weed control**

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

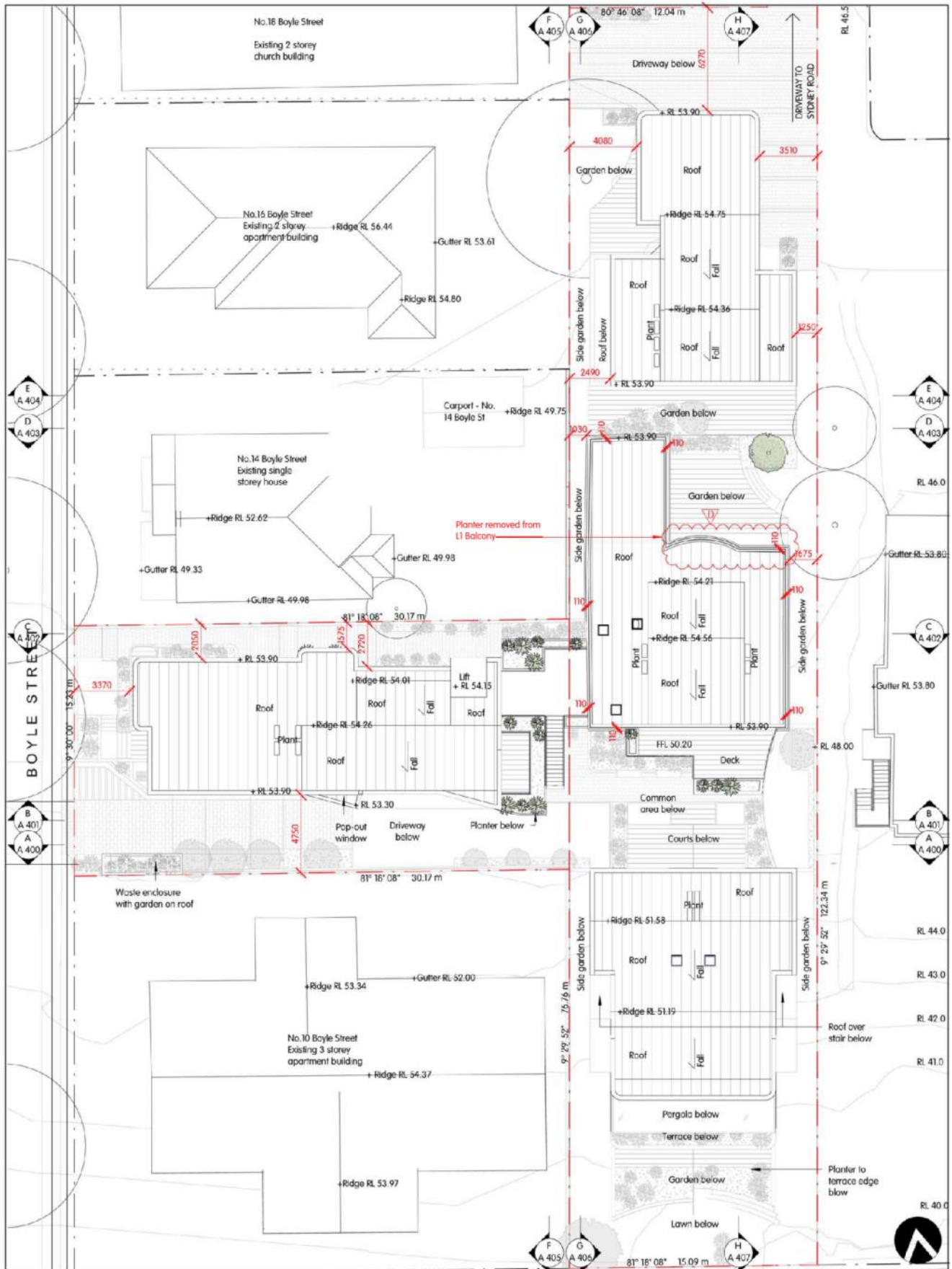
Reason: preservation of environmental amenity.

58. **Vehicular Access**

The development is to comply with the following:

- All vehicles are to enter and exit the site in a forward direction.
- All vehicles are to be wholly contained on site before being required to stop.

Reason: To minimise traffic conflicts.



Richard Day, Level 4, 17 Riverside St, Sydney NSW 2000
T +61 2 8222 8300 adam.russell@richardday.com.au
ABN: 60059233533 NSW REGD ARCHITECT: Adam Russell (6744)

D 14/11/2019 REVISED BY JTA
C 06/11/2019 REVISED DIALS BY JTA
REV DATE DESCRIPTION

NOTES
ALL DIMENSIONS SHOWN IN PARENTHESES ARE APPROXIMATE
ALL DIMENSIONS AND LOCATIONS TO BE CHECKED ON SITE PRIOR TO COMMENCEMENT OF WORK
GARDEN FENCING AND BOUNDARY TO BE SET OUT PRIOR TO COMMENCEMENT OF WORK
VERIFY ALL DIMENSIONS ON SITE & REPORT ALL DISCREPANCIES TO THE ARCHITECT
IF THE DIMENSIONS & THE COMPLETION OF THE PLANS & ELEVATIONS ARE NOT REVIEWED, CORRECTED OR USED
WITHOUT THE EXPRESS WRITTEN AUTHORITY OF THE ARCHITECT, THE USER ACCEPTS RESPONSIBILITY

0 2 4m

CLIENT
Sun Property Group
PROJECT ADDRESS
307 Sydney Road and 12 Boyle Street, Balgowlah

SCALE 1:250

DATE
14/11/2019

DRAWN BY
ED/AMH

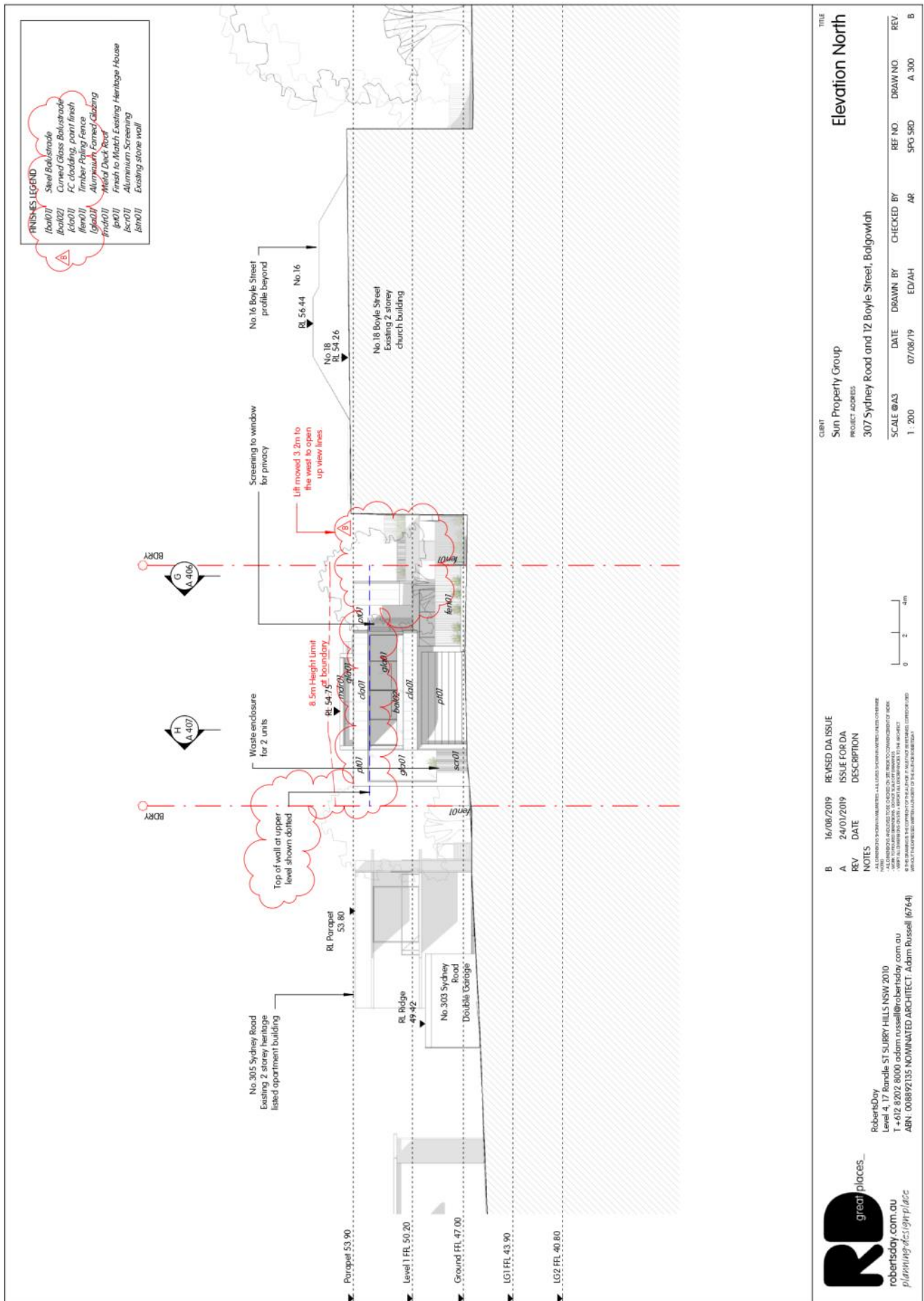
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REF NO.
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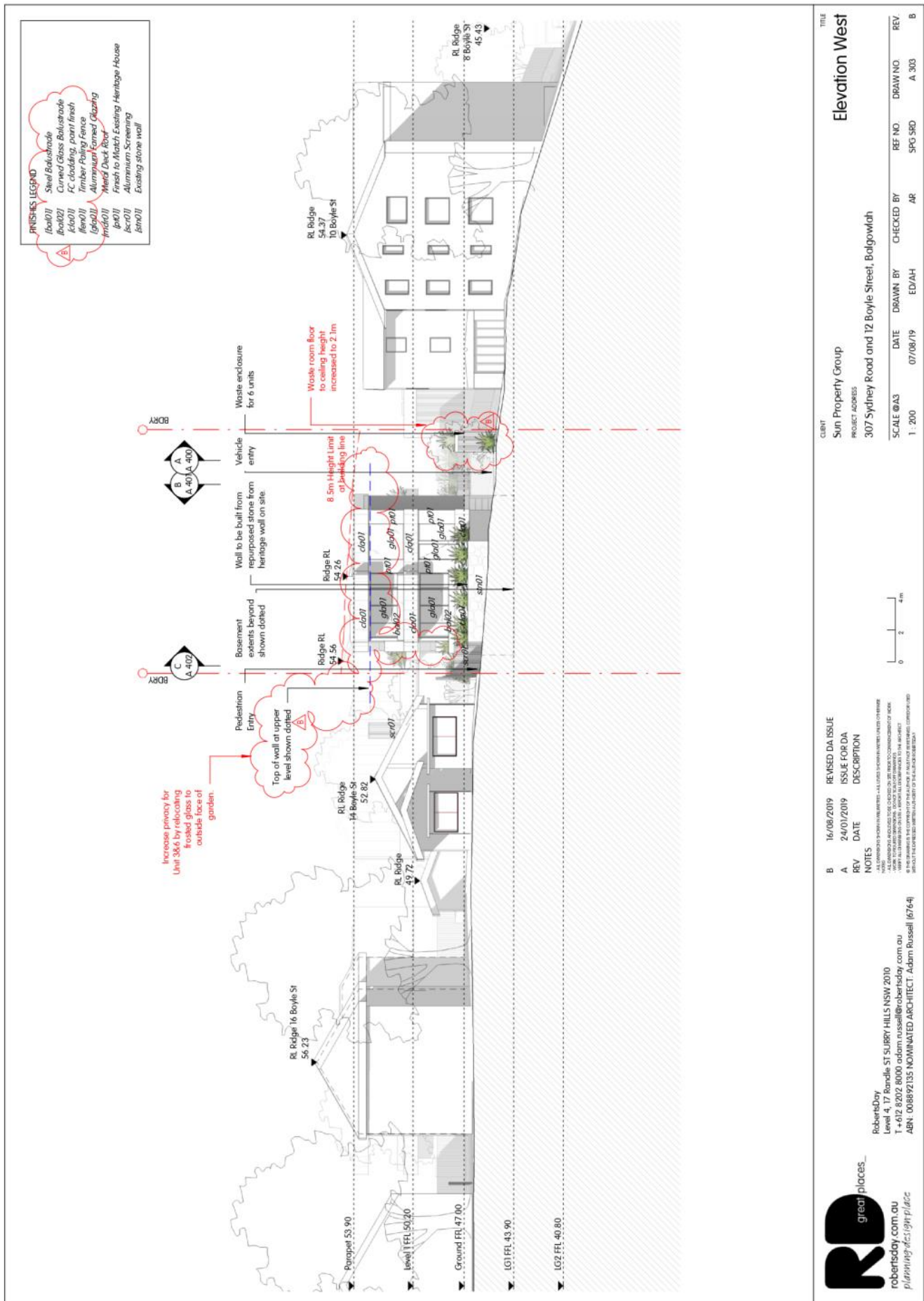
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Plan - Roof/Site









Attachment 1

Clause 4.6 variation request – Height of buildings

Pursuant to Clause 4.3 of MLEP 2013 the height of a building on the subject land is not to exceed 8.5 metres in height. The objectives of this control are as follows:

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) *to control the bulk and scale of buildings,*
- (c) *to minimise disruption to the following:*
 - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) *views between public spaces (including the harbour and foreshores),*
- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Building height is defined as follows:

building height (or height of building) means the vertical distance between ground level (existing) and 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

Ground level existing is defined as follows:

ground level (existing) means the existing level of a site at any point.

It has been determined that there are 3 minor breaching roof/ pergola elements with the maximum height of the development being 9.675 metres above ground level existing. These breaches occur in the south eastern corner of town house 1 and the clerestory element over Unit 6 as depicted on plan B002(A) as reproduced in Figure 1 below. This represents a maximum non-compliance of 1.175 metres or 13.8%. The balance of the development sits comfortably below the 8.5 metre height standard.



Figure 1 – Plan extract showing 8.5 metre height breaching roof/ pergola elements

Clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

- to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Pursuant to clause 4.6(2) 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.

This clause applies to the clause 4.3 Height of Buildings Development Standard.

Clause 4.6(3) states that 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.*

Clause 4.6(4) states 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 Director-General has been obtained.*

Clause 4.6(5) states that in deciding whether to grant concurrence, the Director-General must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

Claim for Variation

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Zone and Zone Objectives

The subject property is zoned R1 General Residential pursuant to Manly Local Environmental Plan 2013 (MLEP 2013) with both dwelling houses and residential flat buildings permissible in the zone with consent. The stated objectives of the R1 General Residential zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

A residential flat building means a building containing 3 or more dwellings but does not include an attached dwelling or multi dwelling housing. The proposed development incorporates 4 detached style pavilions 3 of which are 2 storeys in height and occupied by residential apartments. Units 1 and 2 are attached and properly described as multi dwelling housing (townhouses) with both uses permissible with consent in the zone.

The proposed development meets the relevant zone objectives as it provides for the housing needs of the community through the provision of a variety of housing types on the land which contribute to the variety of housing densities in the area. The development is consistent with the zone objectives as outlined.

Accordingly, there are no statutory zoning or zone objective impediment to the granting of approval to the proposed development.

Height of Buildings Standard and Objectives

This standard and the associated objectives have been previously identified. Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

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

Comment: The height, bulk, scale and roof form proposed are entirely consistent with the built form characteristics established by surrounding development with the minor breaching roof and pergola elements not leading to inconsistency in this regard. The areas of non-compliance are appropriately described as minor and can be attributed to the topographical characteristics of the site which falls away adjacent to its southern boundary. This objective is satisfied.

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

Comment: The minor breaching roof and pergola elements do not contribute to unacceptable bulk and scale with the highly articulated and modulated pavilion style development form, which steps down the site in response to topography, achieving a contextually appropriate bulk and scale. This objective is satisfied.

(c) to minimise disruption to the following:

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

Comment: In relation to potential view affectation from No's 10 and 16 Boyle Street we refer to the accompanying view loss analysis for No. 10 Boyle Street prepared by the project Architect from available survey information (Plans A700(A) to A705(A)) and the view analysis prepared by the project Architect dated 16th August 2019 for No. 16 Boyle Street. Such analysis is at Attachment 1.

Having regard to the view sharing principles established by the Land and Environment Court of NSW in the matter of Tenacity Consulting v Warringah [2004] NSWLEC 140 as they relate to an assessment of view impacts, we have formed the following opinion:

First Step - Assessment of views to be affected

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

No. 10 Boyle Street

Comment: Having inspected the site and its surrounds to identified potential view corridors, and having regard to the submission previously received from a number of property owners within the adjoining residential flat building at No. 10 Boyle Street, it has been determined that the Town Houses 1 and 2 will impact district and distant harbour views currently available from the east facing bedroom windows (Bed 01 and Bed 02 as depicted on plans A201(A) to A204(A)) of the ground, first and second floor apartments in a south easterly direction across the subject site towards the harbour.

We note that the views currently obtained from the south facing principal living rooms and adjacent balcony will be preserved.

No. 16 Boyle Street

Comment: The view analysis prepared by Roberts Day Architects confirms that Unit 4/16 Boyle Street currently obtains a restricted, partial and filtered view in a south easterly direction from the south facing bedroom window towards the eastern tip of Dobroyd Head and the ocean horizon beyond. A small area of Dobroyd Head ridgeline is visible in a southerly direction above and between trees located on adjoining properties. The land/ water interface is not visible.

This apartment has 2 south facing living room windows hereafter referred to as the eastern and western living room windows. A restricted, partial and filtered view is available in a south easterly direction from the south facing eastern living room window towards the tip of North Head and ocean horizon beyond. A small area of Dobroyd Head ridgeline is visible in a southerly direction above and between trees located on adjoining properties. The land/ water interface is not visible.

A restricted, partial and filtered view is available in a south easterly direction from the south facing western living room window towards North Head, Middle Harbour and the ocean horizon beyond. The North Head land/ water interface is visible. A small area of Dobroyd Head ridgeline is visible in a southerly direction above and between trees located on adjoining properties.

Second Step - From what part of the 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.

No. 10 Boyle Street

Comment: These views are available from the bedroom areas of the adjoining apartments from both a seated and standing position. The views are across side and/or rear boundaries and across multiple properties. They are highly vulnerable to view impacts from any complaint development on the subject site.

No. 16 Boyle Street

Comment: These views are available from the rear bedroom and living areas of the property from a standing position with seated views significantly diminished given the shallow nature of the views obtained over vegetation and across the roof of the heritage listed dwelling located on the subject property. The views available over the subject site are obtained directly across the side boundary and over the roof of the existing single storey heritage listed dwelling located on the central portion of the subject site.

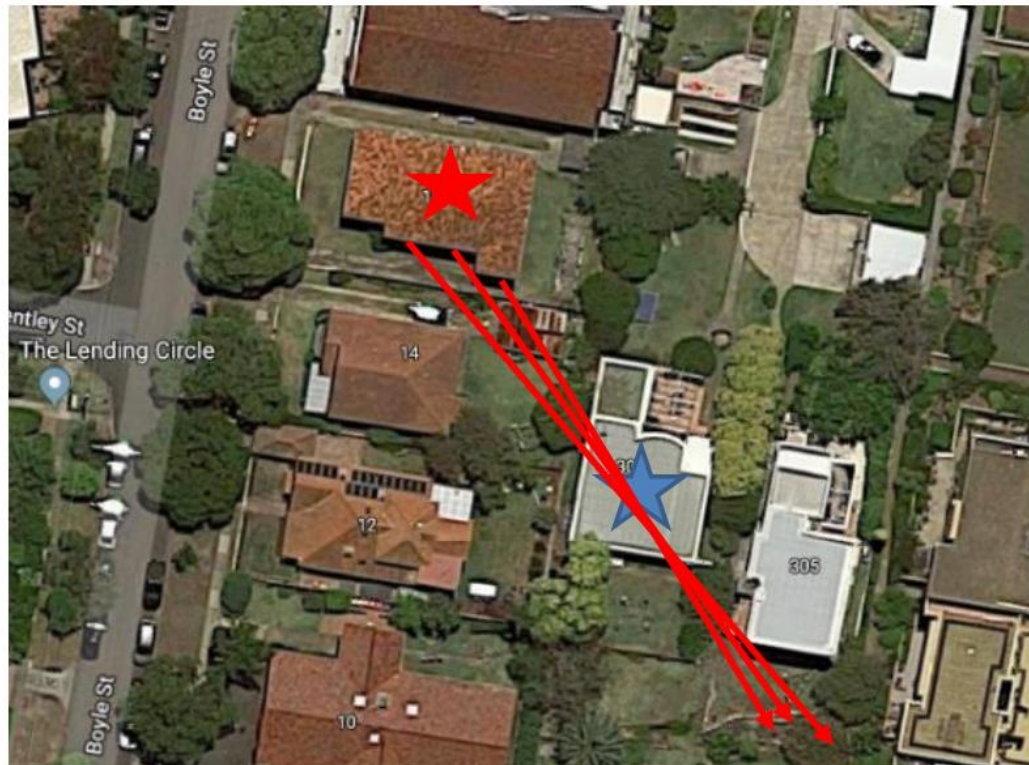


Figure 2 – Aerial photograph showing primary view lines from Unit 4/16 Boyle Street (shown with red star and arrows). The existing heritage listed dwelling on the subject site is depicted by a blue star.

Third Step – Assessment of extent of the 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.

No. 10 Boyle Street

Comment: The extent of view impact is depicted on plans A700(A) to A705(A) with existing views available in an easterly direction across the rear portion of the subject site totally obscured from both bedroom windows at both ground and first floor level.

That said, oblique views obtained from these windows are maintained to varying extent such that at no location are 100% of available views obscured. Scenic distant harbour views from both bedrooms on level 2 are unaffected.

We have formed the considered opinion that the view impact will range from negligible to moderate from these bedrooms areas however in the context of the totality of the views maintained, including 100% from the principal living and adjacent balcony areas of each apartment, we are of the opinion that the overall view loss, having regard to the view loss assessment criteria, is appropriately described as minor.

No. 16 Boyle Street

Comment: The view analysis prepared by Roberts Day Architects confirms that the amended scheme will totally obstruct the restricted, partial and filtered view available in a south easterly direction from the south facing bedroom window towards the eastern tip of Dobroyd Head and the ocean horizon beyond however will create a new view corridor in a southerly direction incorporating a restricted and partial view towards Dobroyd Head and its ridgeline.

The amended scheme will totally obstruct the restricted, partial and filtered view available in a south easterly direction from the south facing eastern living room window towards the tip of North Head and ocean horizon beyond however will create a new view corridor in a southerly direction incorporating a restricted and partial view towards Dobroyd Head and its ridgeline.

The amended scheme will totally obstruct the restricted, partial and filtered view available in a south easterly direction from the south facing western living room window towards North Head, its land/ water interface, Middle Harbour and the ocean horizon beyond however will maintain a restricted and partial ocean horizon view.

Based on an assessment of the totality of the views available from this property, and the vulnerability of the shallow views available across site boundaries, through vegetation and over and roof of the single storey heritage listed dwelling located on the subject property, we consider the view impact from the bedroom and eastern living room to be appropriately described as moderate and the view impact from the western living room to be severe.

Fourth Step – Reasonableness of the proposal

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.

No. 10 Boyle Street

As previously indicated, minor areas of upper level roof and walls to townhouses 1 and 2 breach the height control however such breaching elements do not contribute, to any measurable extent, to the view loss from the adjacent bedroom areas.

Under such circumstances there can be no reasonable expectation for these bedroom views to be preserved.

No. 16 Boyle Street

Comment: The proposed development, as amended, complies with the 0.6:1 FSR standard. It has been determined that there are 3 minor breaching roof/ pergola elements with the maximum height of the development being 9.675 metres above ground level existing. These breaches occur in the south eastern corner of Townhouse 1 and the clerestory element over Unit 6 as depicted on plan B002(A) as reproduced in Figure 2 over page. This represents a maximum non-compliance of 1.175 metres or 13.8%. The balance of the development sits comfortably below the 8.5 metre height standard. Importantly, these breaching elements do not contribute towards the view impact as outlined.



Figure 2 – Plan extract showing 8.5 metre height breaching roof/ pergola elements

Having reviewed the detail of the application we have formed the considered opinion that the breaching height elements do not contribute to view impacts from either property with a view sharing scenario maintained between adjoining properties in accordance with the principles established in the matter of Tenacity Consulting Pty Ltd v Warringah Council [2004] NSWLEC140 and Davies v Penrith City Council [2013] NSWLEC 1141.

Council can be satisfied that the development has minimised adverse environmental impacts on the use or enjoyment of adjoining land and the public domain with no resultant public view affectation. Accordingly, the proposal is consistent with this objective.

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

Comment: As depicted on the accompanying shadow diagrams (plans A500(A) to A502(A)) we have determined that the minor breaching elements will not contribute to any unreasonable overshadowing of the public or private domains with compliant levels of solar access maintained to all surrounding residential properties. This objective is satisfied.

- (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Comment: N/A

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development, by virtue of the minor building height breaching elements, offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.

Having regard to the matter of *Veloshin v Randwick City Council* [2007] NSWLEC 428 this is not a case where the difference between compliance and non-compliance is the difference between good and bad design.

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

In this regard, we have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including topography of the land which makes strict compliance more difficult to achieve and the increased amenity afforded by the breaching clerestory and pergola elements.

Further, the compatibility of the proposed building height with the height and form of surrounding development, the developments compliance with the objectives of the height standard and the general paucity of adverse environmental impact also give weight to the acceptability of the variation sought.

A better environmental planning and urban design outcome is achieved through the facilitation of the building height variation proposed. The building is of good design quality and represents the orderly and economic use and development of the land consistent with objectives 1.3(c) and (g) of the Act.

Conclusions

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

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

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

Please not hesitate to contact me to discuss any aspect of this submission.

Yours sincerely

Boston Blyth Fleming



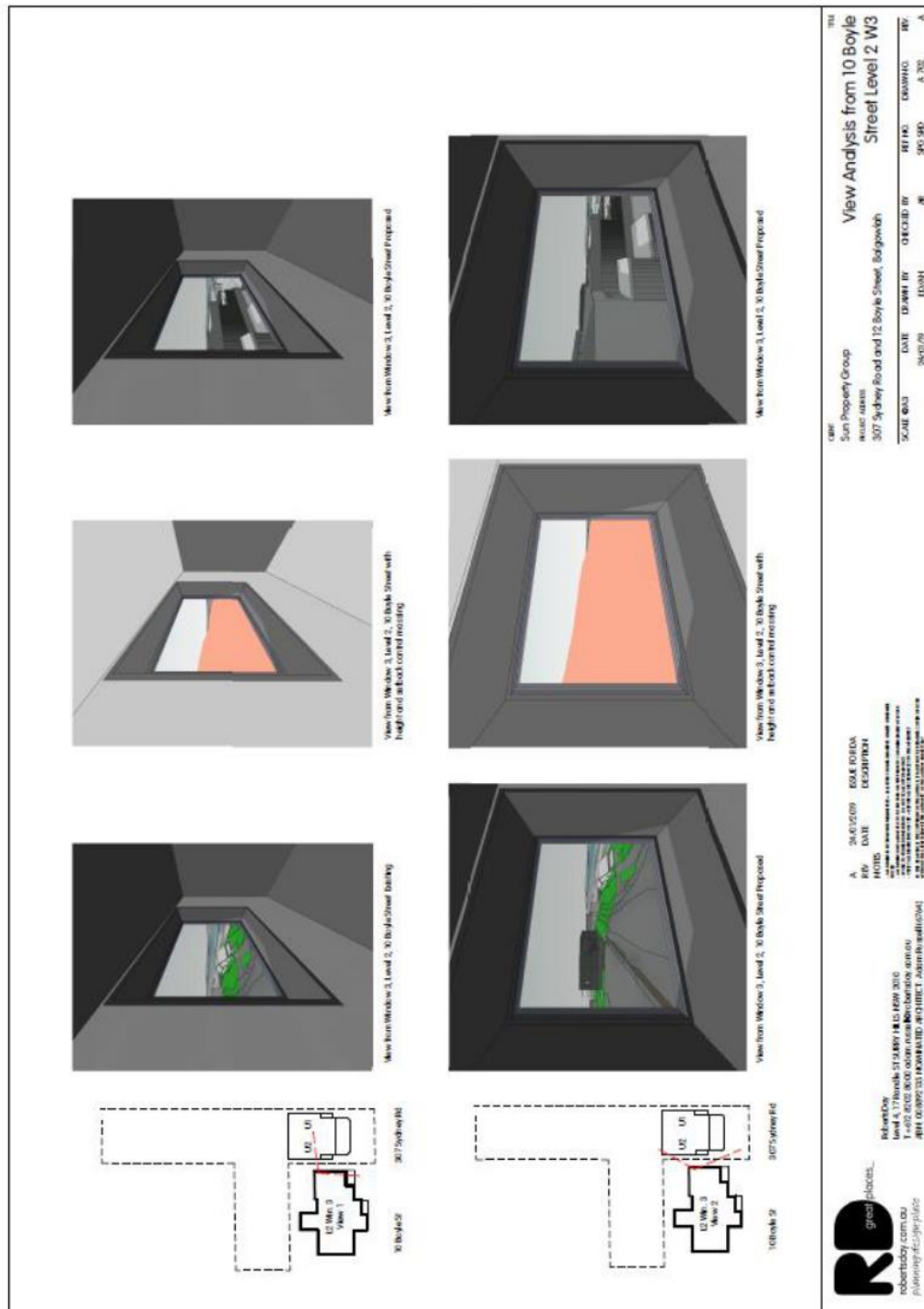
Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director

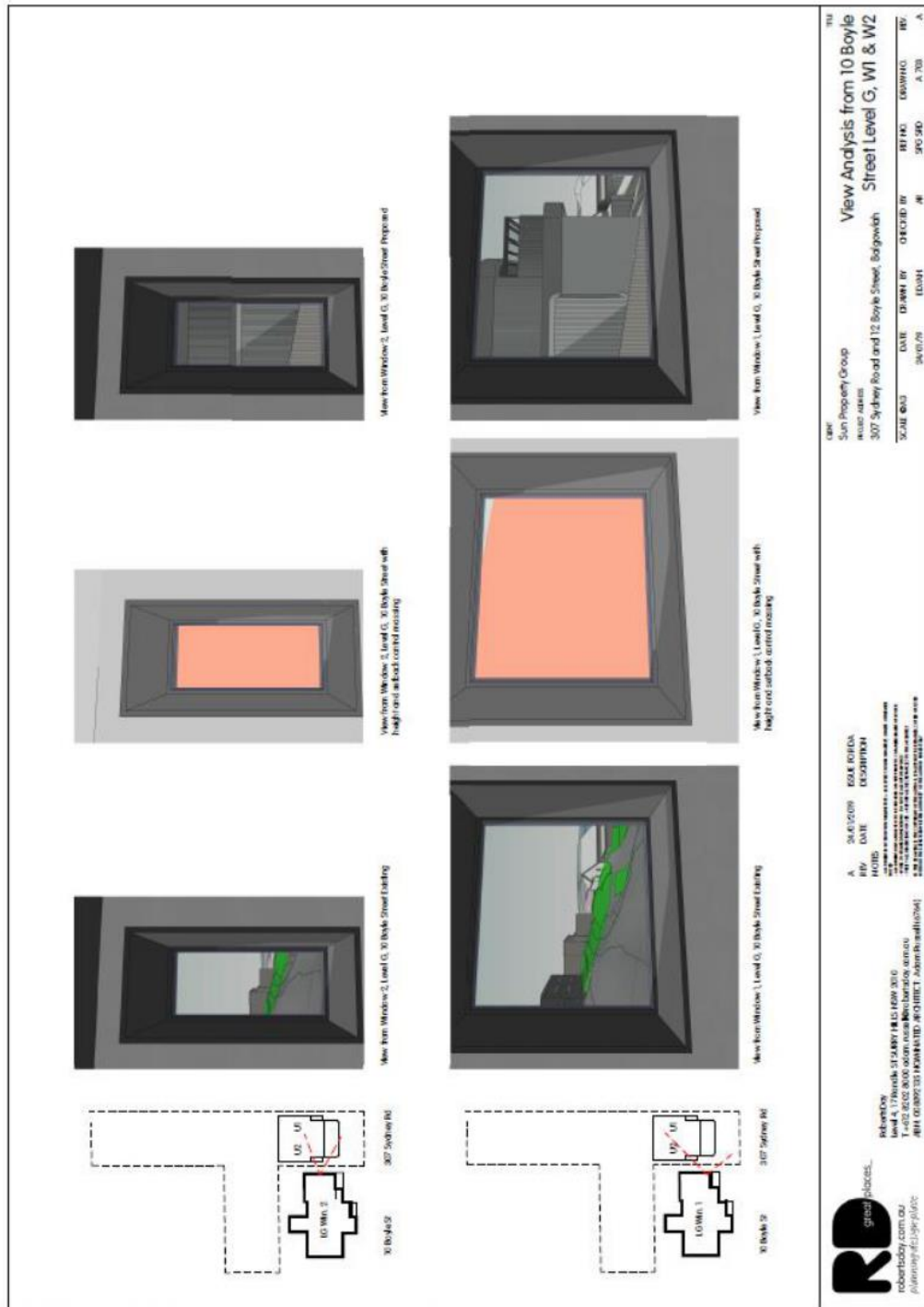
Attachments

1. View analysis diagrams









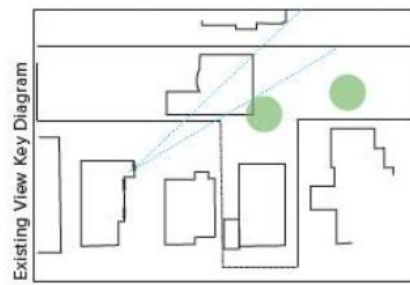
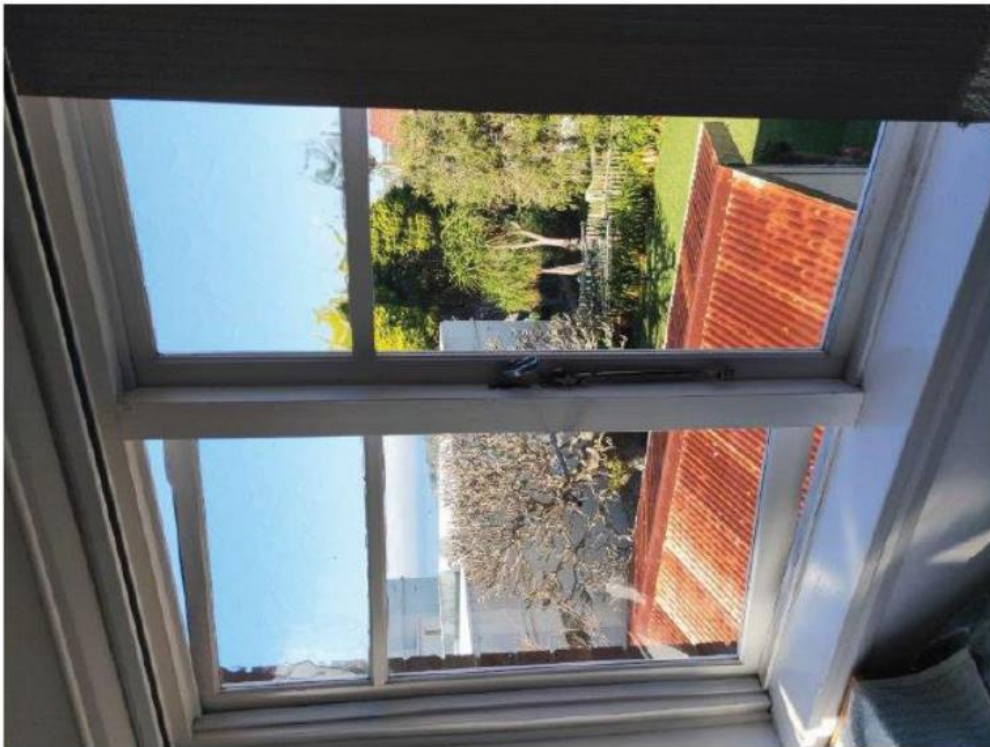


120

16 August 2019

Bedroom View Analysis
From Unit 4/16 Boyle St

Existing View



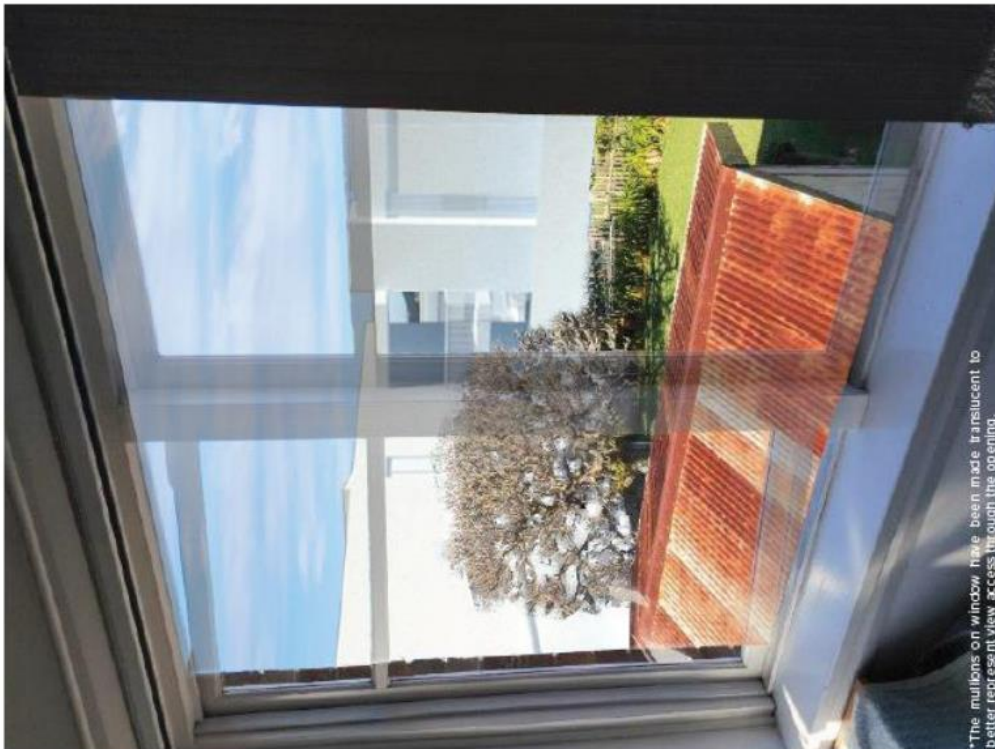
Disclaimer: The photomontages have been prepared according to the survey information provided by Geosurv and photographs provided by the client. The methodology includes using 3d modelling software to create the existing context, proposed built forms and match the photographs to the 3d model based on existing reference points.

RobertsDay does not attempt to verify the accuracy, validity or comprehensive of any information supplied to RobertsDay by third parties.

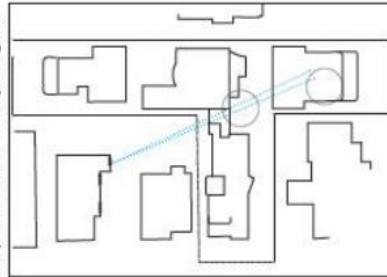
16 August 2019

Bedroom View Analysis
From Unit4/16 Boyle St

Proposed DA



Proposed DA View Key Diagram



RD
grad/places

Disclaimer: The photographs have been prepared according to the survey information provided by Geosurv and photographs provided by the client. The methodology includes using 3d modelling software to create the existing context, proposed built forms and match the photographs to the 3d model based on existing reference points.

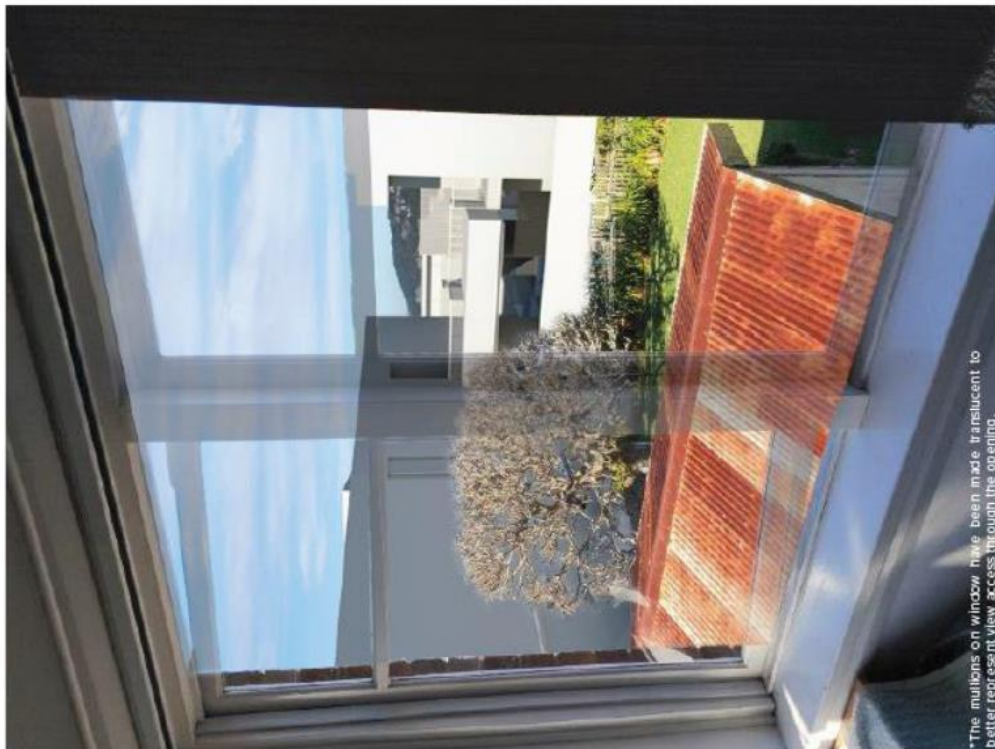
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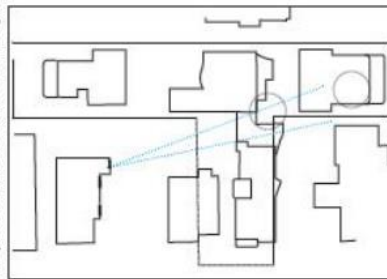
16 August 2019

Bedroom View Analysis
From Unit4/16 Boyle St

Proposed DA Amendment



Proposed Amendment View Key Diagram



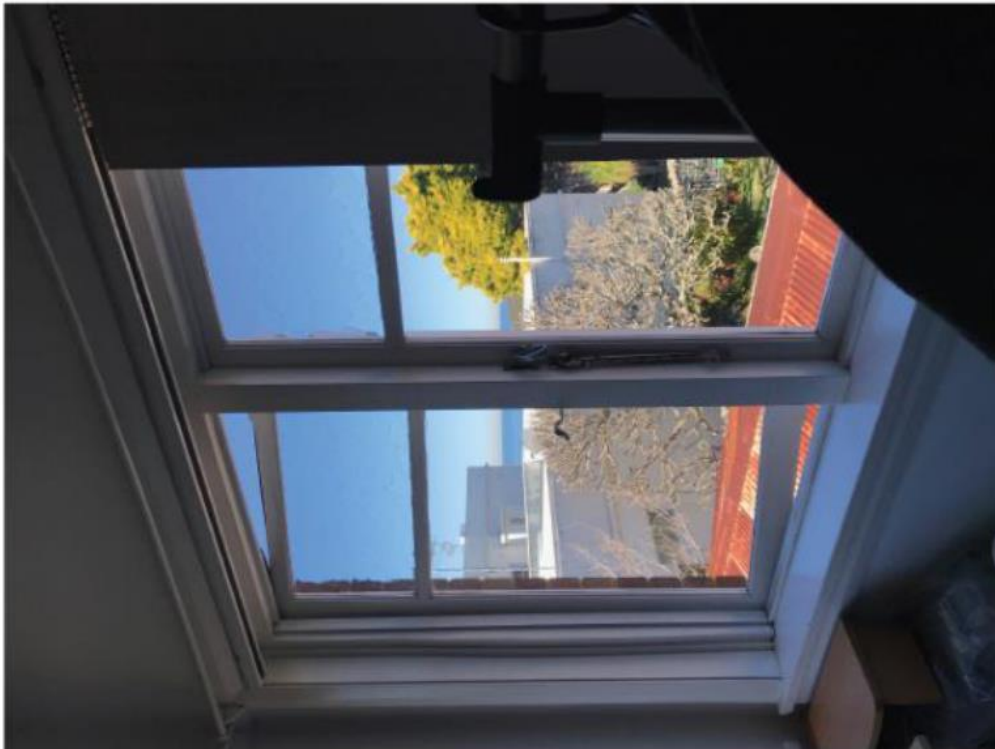
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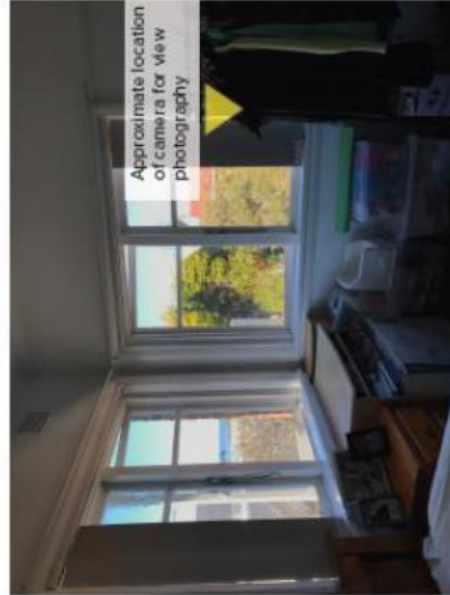
16 August 2019

Bedroom View Analysis
From Unit 4/16 Boyle St

Site Visit Verification Photography



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grid places

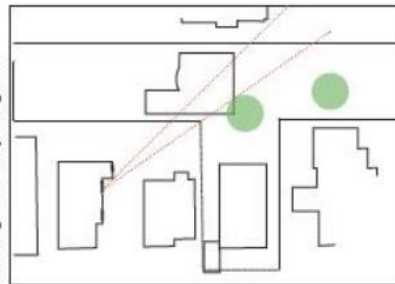


4

Eastern Living Room View Analysis
 From Unit4/16 Boyle St
 Existing View



Existing View Key Diagram



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16 August 2019

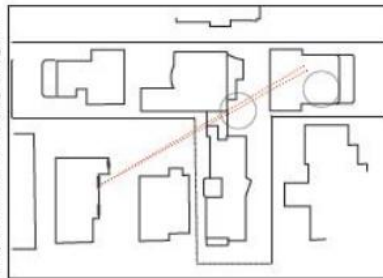
Eastern Living Room View Analysis
From Unit4/16 Boyle St

Proposed DA



*The mullions on window have been made translucent to better represent view access through the opening.

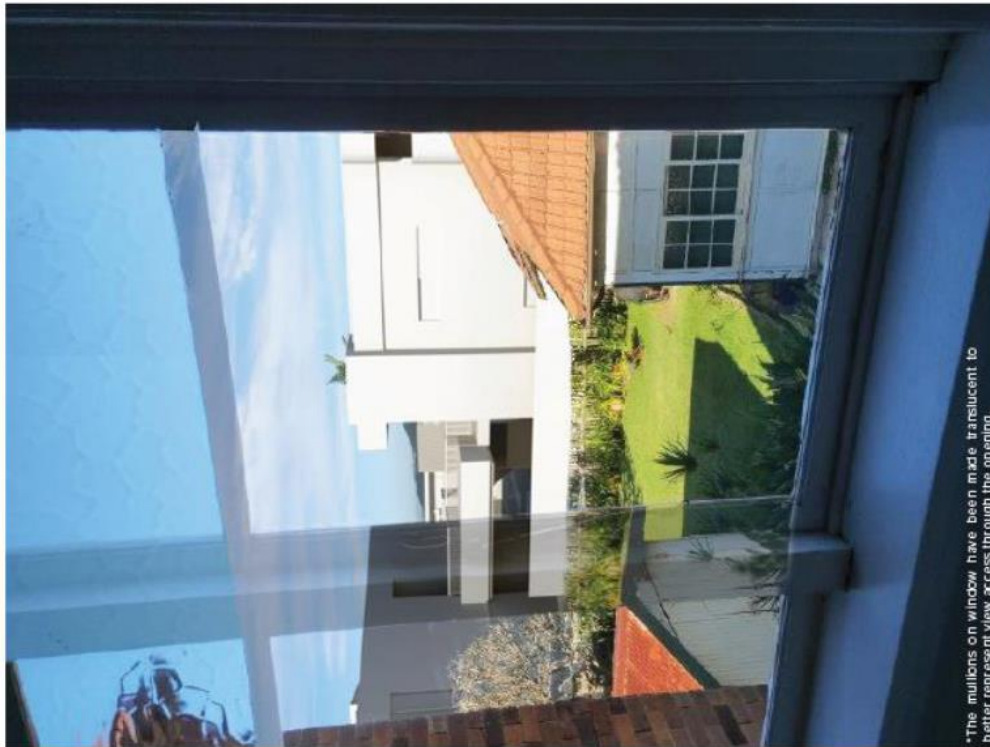
Proposed DA View Key Diagram



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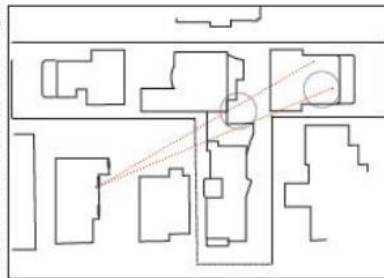
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Eastern Living Room View Analysis
From Unit 4/16 Boyle St
Proposed DA Amendment
16 August 2019



*The mullions on window have been made translucent to better represent view access through the opening.

Proposed Amendment View Key Diagram

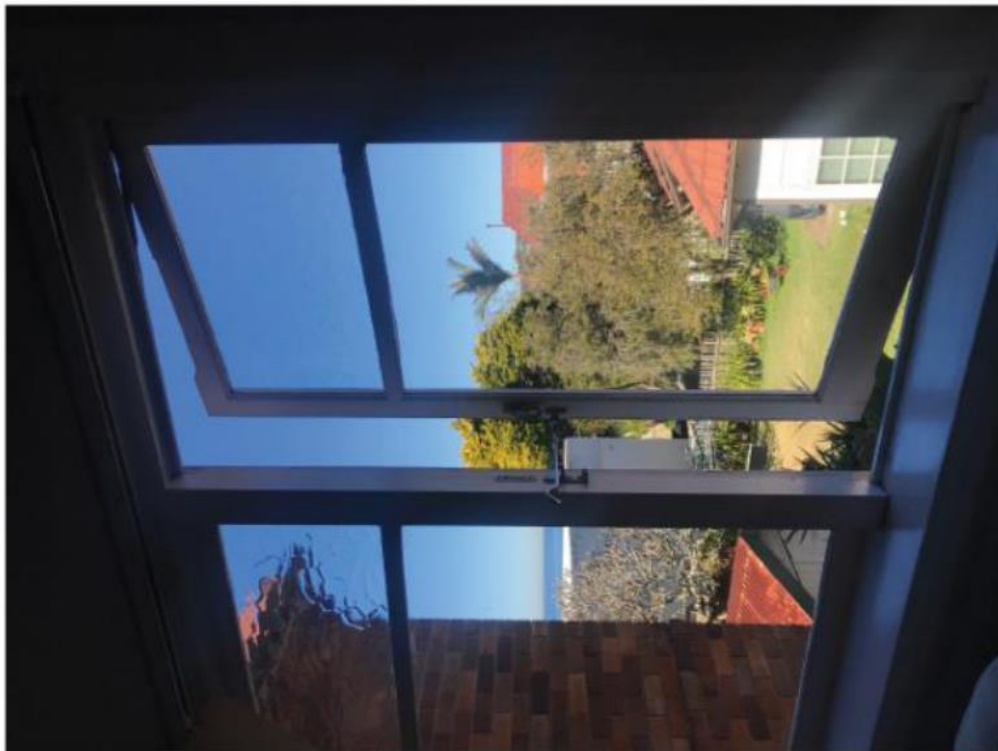


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Eastern Living Room View Analysis
From Unit 4/16 Boyle St
16 August 2019
Site Visit Verification Photography

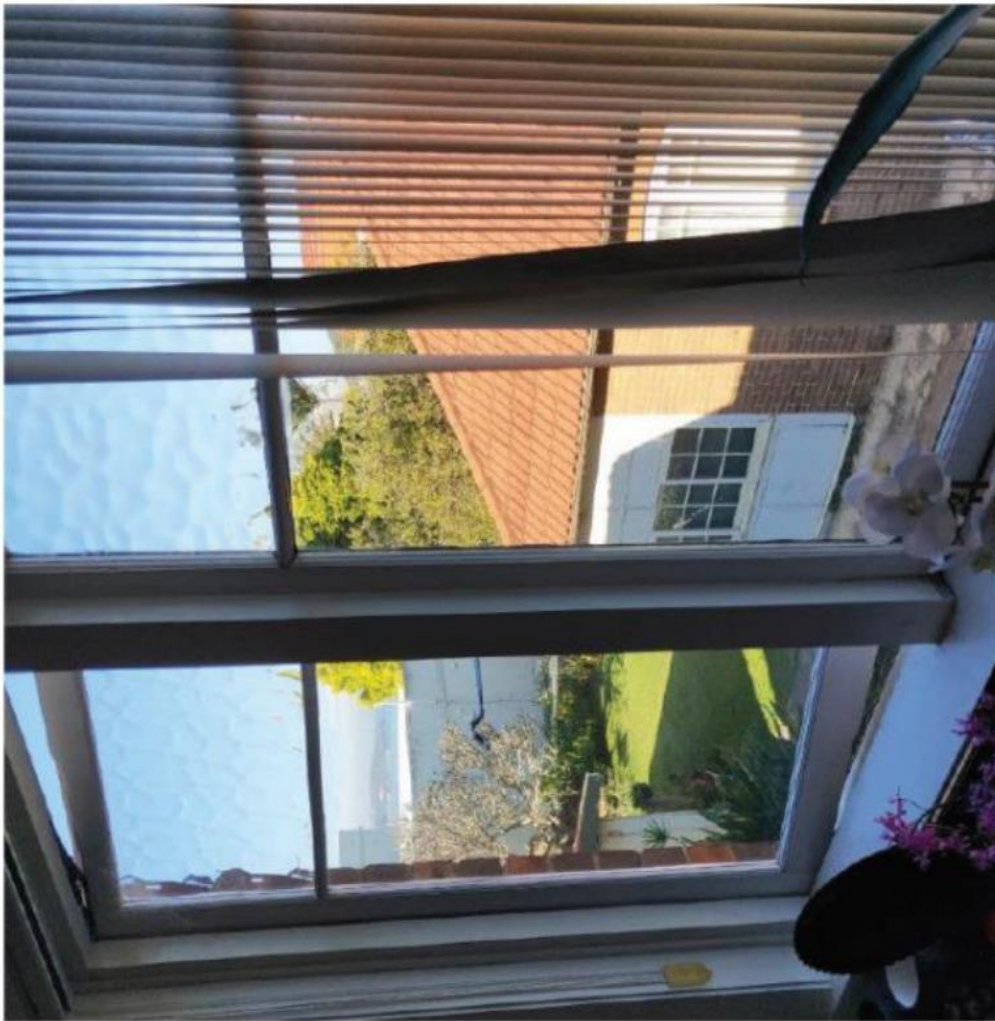
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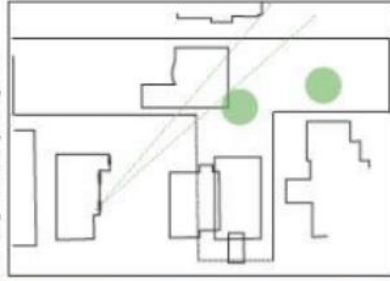
16 August 2019

Western Living Room View Analysis
From Unit3/16 Boyle St

Existing View



Existing View Key Diagram



RD
greatplaces

Disclaimer: The photomontages have been prepared according to the survey information provided by Geosurv and photographs provided by the client. The methodology includes using 3d modelling software to create the existing context, proposed built forms and match the photographs to the 3d model based on existing reference points.

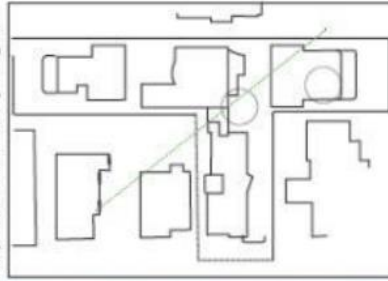
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9

16 August 2019
Western Living Room View Analysis
From Unit 3/16 Boyle St

Proposed DA

Proposed DA View Key Diagram



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10



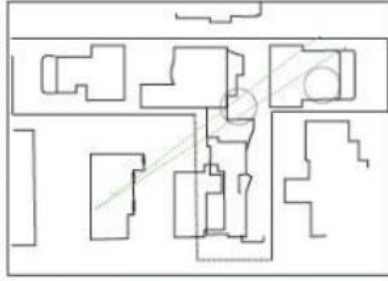
*The mullions on window have been made translucent to better represent view access through the opening.

16 August 2019

Western Living Room View Analysis
From Unit3/16 Boyle St

Proposed DA Amendment

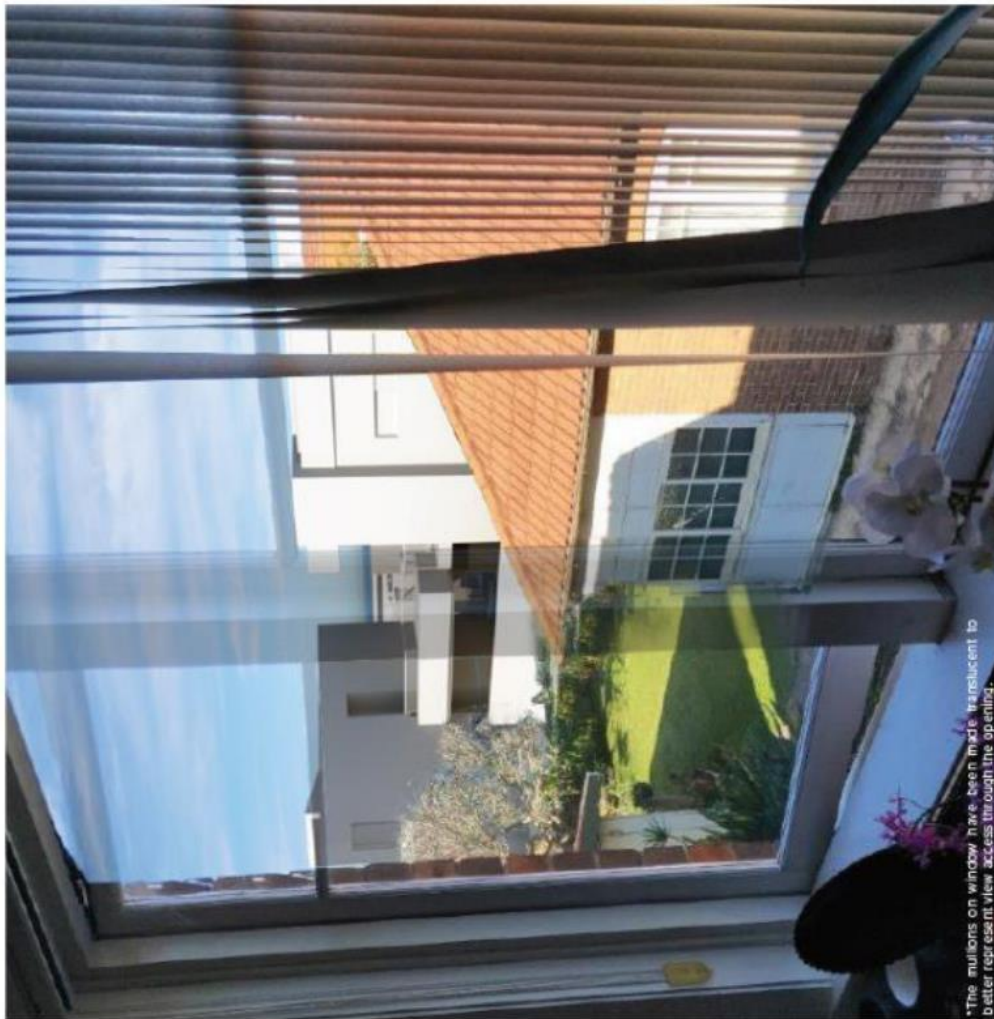
Proposed Amendment View Key Diagram



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11

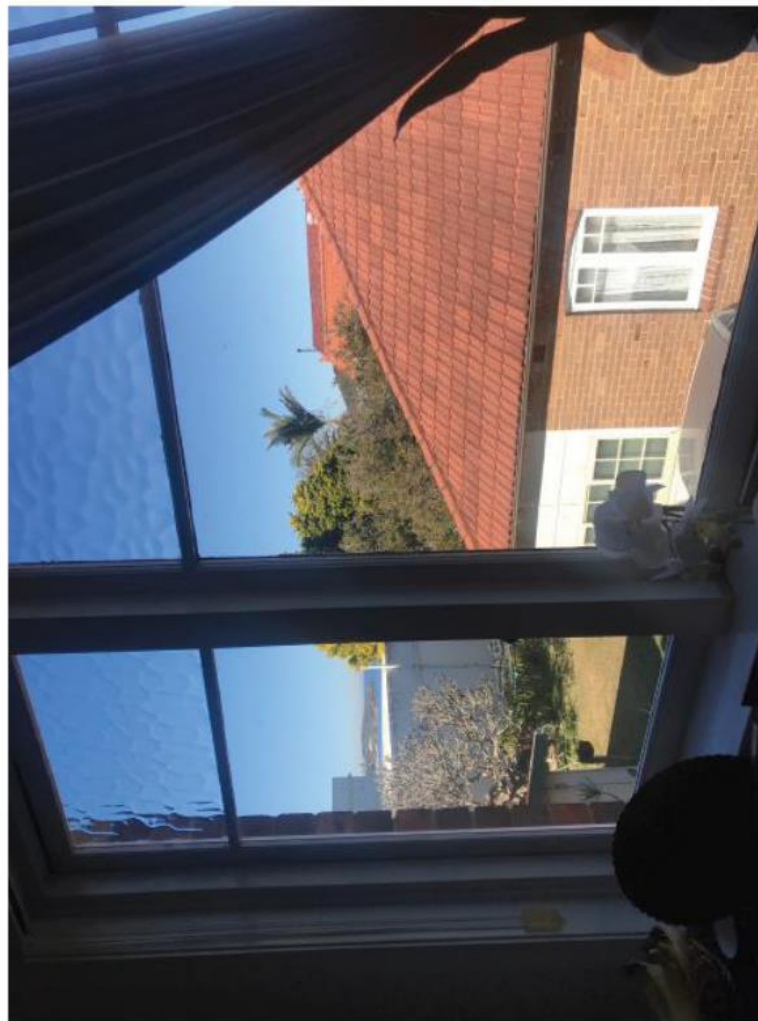


*The mullions on window have been made translucent to better represent view access through the opening.

16 August 2019

Western Living Room View Analysis
From Unit3/16 Boyle St

Site Visit Verification
Photography



RD
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12

4.0 REVIEW OF DETERMINATIONS

ITEM 4.1 REV2019/0049 - 4 AUGUSTA STREET, MANLY - REVIEW OF DETERMINATION OF APPLICATION DA2019/0124 FOR ALTERATIONS AND ADDITIONS TO THE EXISTING MULTI DWELLING HOUSING

REPORTING OFFICER STEVE FINDLAY

TRIM FILE REF 2019/689199

ATTACHMENTS 1 [↓](#) Assessment Report
 2 [↓](#) Site Plan and Elevations
 3 [↓](#) Clause 4.6 - Height of Building
 4 [↓](#) Clause 4.6 - Floor Space Ratio

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 and Floor Space Ratio Development Standard of Clause 4.4 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives of the zone.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. REV2019/0049 for review of determination of Application DA2019/0124 for alterations and additions to the existing multi dwelling housing at Lot 2 Sec 11 DP 2428, 4 Augusta Road, Manly subject to the conditions and for the reasons set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2019/0049
Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 2 DP 2428, 4 Augusta Road MANLY NSW 2095
Proposed Development:	Review of Determination of Application DA2019/0124 Alterations and additions to the existing multi dwelling housing
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Oliver David Campbell Rees Jennifer Frances Rees
Applicant:	Oliver David Campbell Rees Jennifer Frances Rees
Application Lodged:	02/09/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	21/09/2019 to 05/10/2019
Advertised:	21/09/2019
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 27.3% 4.4 Floor space ratio: 25.3%%
Recommendation:	Approval
Estimated Cost of Works:	\$ 990,000.00

Executive Summary

The application seeks a review of the determination of DA2019/0124, for the alterations and additions to the existing multi dwelling housing, which was refused by the Northern Beaches Local Planning Panel on 24 July 2019.

The Northern Beaches Local Planning Panel (NBLPP) was not satisfied with the the applicant's written request under clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of clause 4.3 Height of Buildings development standard, and clause 4.4 Floor Space Ratio development

standard. Subsequently, the NBLPP refused the application due to the proposed height, bulk and scale of the proposal and the privacy and view impact on the western adjoining neighbours.

An amended design has been received that reduces the proposals building height and floor space ratio to provide a more appropriate bulk and scale. The amended design demonstrates an improved stepped profile, which is more fitting with the sloping topography. The reduced built form of the loft floor has also addressed the privacy and amenity impacts to the western neighbours.

A view loss assessment has been undertaken as a result of the amended design. The assessment has concluded that view loss impact is found to be reasonable in this instance.

One (1) submission was received during the notification period.

Accordingly, the proposal as amended has addressed the reasons for refusal relating to the building height, bulk and scale, view loss and privacy, and as such, the application is referred to the NBLPP for determination with a recommendation to change the determination of the application, following review, to approve the application.

PROPOSED DEVELOPMENT IN DETAIL

The application has been lodged under the provisions of section 8.3 of the EP&A Act, seeking a review of the Northern Beaches Local Planning Panel (NBLPP) refusal of DA2019/0124, which sought approval for the alterations and additions to the existing multi dwelling housing at the subject site.

The NBLPP refused the application for the following reasons:

- 1. The proposed development does not properly address the sloping topography of the site, will not be in keeping with the current and future desired character of the area and is inconsistent with the general height and bulk of the surrounding residential development.*
- 2. The proposed development has unacceptable view and privacy impacts on the neighbours at 6 Augusta Road and 3 Sheridan Place considering that a more sympathetic design could minimise these view and privacy impacts.*

In response to the NBLPP refusal, the applicant sought a review of the determination and the proposed design has been amended in a number of ways, including the following:

- The extension to the northern elevation of the roof level has been reduced
- Reduction in the building height from 12.2m to 11.7m
- The proposed east facing dormer windows reduced from three to two
- The existing northern hip form will remain, with small Dutch gable to the northern face of the hip
- The floor area of the loft level has been reduced from 81.24m² to 55.08m²
- Internal reconfiguration of the loft with the removal of the study and void space
- The proposed privacy screen on the western elevation of the lower floor terrace has been set back to 2.0m from the western boundary.



Figure 1. The reduction in the built form as a result of the amended design shown in pink.

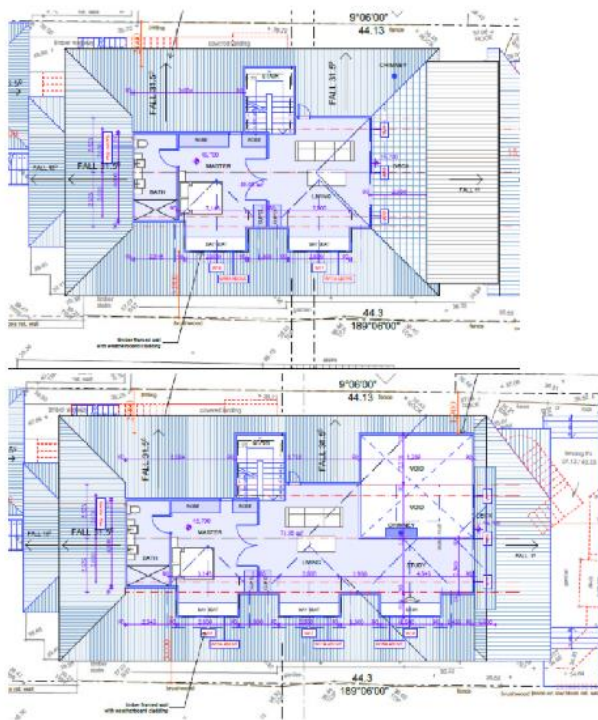


Figure 2. The amended loft floor plan
(DA2109/0124)

Figure 3. The original loft floor plan

Section 8.3(3) provides that the applicant may amend the proposal, however the consent authority must be satisfied that the amended proposal presented in the review application remains substantially the same as that considered in the original development application. Council is satisfied that the amended proposal is substantially the same, and as such the application is referred to the NBLPP for determination.

Therefore, in summary, the revised proposal comprises of the following works:

Lower Floor

- New living room with bathroom and internal stair access to each existing unit
- New common laundry with external access

Ground Floor

- Internal reconfiguration
- Replacement of windows W6 and W7
- Deck extension
- Biofold doors on the rear decks
- New internal stair access

Upper Floor

- Internal alterations to provide for a new entry
- New study
- Three (3) bedrooms, one with an ensuite
- New Bathroom
- Laundry
- Lounge and dining room
- Reconfiguration of the rear deck

Loft Floor

- New Master Bedroom
- Bathroom
- Living room
- New rear deck

External Works

- New access from Augusta Road
- Replacement of existing carport
- Two (2) new tandem garages
- One storage area
- Landscaping, paths and planting including a privacy screen.

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

Environmental Planning and Assessment Act 1979 - Section 8.3 -
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 2 DP 2428 , 4 Augusta Road MANLY NSW 2095
Detailed Site Description:	<p>The property is legally described at Lot 2 within DP 2428, and is known as 4 Augusta Road Manly. The property is located within the R1 General Residential zone and accommodates a three unit multi dwelling housing building.</p> <p>The property is regular in shape with a surveyed area of 606.4sqm. The property has two frontages, the frontage to Augusta Road and Sheridan Place is 13.715m, and the eastern and western boundaries measure approximately 44m.</p> <p>The property has a steep slope down from the Augusta Road frontage to Sheridan Place. The property falls at an average angle of 5 degrees, then increases to 8 degrees towards the Sheridan Place secondary frontage.</p> <p>The property is located within the Class 5 Acid Sulfate Soils area and identified as being within the G4 Landslip Hazard Map in Manly Development Control Plan.</p>

The property currently contains three units within the multi dwelling housing building. The three dwellings are currently spread over three levels. Parking for the site is within an existing carport fronting Augusta Road, with informal car spaces fronting Sheridan Place.

The property is surrounded by residential development of varying age, scale and density. Residential dwelling houses immediately adjoin the subject property, with an multi storey residential flat buildings tot he north and north east. The residential development in the vicinity have been designed and oriented to take advantage of the ocean and beach views of Manly Beach.

Map:



SITE HISTORY

On 4 October 2018, Development Application No. **DA2019/0124** for the alterations and additions to the multi dwelling housing was lodged with Council. On 24 July 2019, the application was presented to the Northern Beaches Local Planning Panel for determination, with a recommendation of approval. The NBLPP ultimately refused the application for the following reasons:

1. *The proposed development does not properly address the sloping topography of the site, will not be in keeping with the current and future desired character of the area and is inconsistent with the general height and bulk of the surrounding residential development.*
2. *The proposed development has unacceptable view and privacy impacts on the neighbours at 6 Augusta Road and 3 Sheridan Place considering that a more sympathetic design could minimise these view and privacy impacts.*

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	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental</p>

Section 4.15 Matters for Consideration'	Comments
	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.

Section 8.3 Application for and Conduct of Review

In accordance with Section 8.3 of the Act, an applicant may request a review of a determination of a development application. The review must be lodged and determined within 6 months of the date of determination of the development application. To meet this requirement, noting that the application was determined on 24 July 2019, the subject review application must be determined before 25 January 2020.

Section 8.3(3) provides that the applicant may amend the proposal, however the consent authority must be satisfied that the amended proposal presented in the review application remains substantially the same as that considered in the original development application.

In this regard, the applicant has made amendments to the proposal in an attempt to address the reasons of refusal as outlined in the Notice of Determination for the original development application. The changes are outlined in the 'Detailed Description of Works' section of this report.

Upon review of these amendments, the consent authority can be satisfied that the amended proposal the subject of the review application remains essentially and materially the same as that proposed in the original application at the time of determination.

Section 8.3(5) prescribes that an application to review a decision by a local planning panel must also be determined by the local planning panel. As such, the application is referred to the NBLPP for determination.

Overall, the review application is considered to be consistent with the provisions of section 8.3 of the EP&A Act, subject to the matter being determined by the NBLPP before 24 January 2020.

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 1 submission/s from:

Name:	Address:
Ms Jenny Kidnie	3 Sheridan Place MANLY NSW 2095

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

- **View impacts from the height of the garage**
- **Privacy Screen on the western elevation**
- **Nuisance lighting**

The matters raised within the submission are addressed as follows:

- ***The height of the garage causes unreasonable view loss.***

Comment:

Submissions have been received from and on behalf of the owner of 3 Sheridan Place, raising concerns regarding impacts to views. Whilst it is acknowledged that the proposed development will impact upon views currently enjoyed, the impact is not unreasonable in the circumstances of the proposal. See further discussion with regard to clause 3.4.2 of MDCP 2013.

This matter does not warrant refusal of the application.

- ***Reduced solar access as a result of the privacy screen on the lower ground level.***

Comment:

Due to the additional bulk and scale of the privacy screen and the amenity impacts that could arise a condition has been included to remove the privacy screen. To ensure privacy levels are maintained, the grassed area (above the garage) will be conditioned to be a landscaped area only, not a recreational area, to ensure no direct overlooking. Therefore, the amended proposal complies with the requisite provisions for solar access and does not unreasonably overshadow adjoining properties.

This matter is addressed in further detail elsewhere in this report.

- ***Nuisance light spill from potential lighting on the western boundary.***

Comment:

Concern has been raised from No.3 Sheridan Street that any installed overhead lighting will create light over spill and amenity impacts. There is no lighting proposed as part of this amended application. There are no specific requirements within the applicable planning controls in regards to the placement of lighting.

However, a condition will be included in the consent that all outdoor lighting is to be directed away from the adjoining property boundaries and must comply with Australian Standard AS/NZS 4282 'Control of obtrusive effects of outdoor lighting'.

This matter does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Solid Fuel/Oil Heater)	<p>Environmental Health has assessed the revised application. Limited information is provided with regard to the Solid Fuel Heater, apart from the flue location which appears to be an extension of an existing flue to an existing heater.</p> <p>Accordingly the impact in relation to the distance to any surrounding affected residences and units has been assessed. Conditions have been applied to ensure the flue will be is correctly utilised.</p> <p>Therefore, the is no objection to the proposed amended development subject to conditions.</p>
Landscape Officer	<p>The landscape component of the proposal is acceptable subject to the protection of the existing Norfolk Island Pine fronting Sheridan Place.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types, and specifically: 3.3.1 Landscaping Design; and 3.3.2 Preservation of Trees or Bushland Vegetation.</p>
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A305042_03, dated 13 August 2019). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. A305042_03, dated 13 August 2019).

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

Commitment	Required Target	Proposed
Water	40	Pass
Thermal Comfort	Pass	Pass
Energy	50	Pass

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

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

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	Original Proposal (DA2019/0124)	Proposed	% Variation	Complies
Height of Buildings:	8.5m	12.2m (43.53% variation)	11.7m	27.3%	No
Floor Space Ratio	FSR: 0.6:1 (363.84sqm)	FSR:0.82:1 (36.95% variation) (498.3sqm)	FSR: 0.752:1 (456.14sqm)	25.3%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

As a result of the Northern beaches Local Planning Panel reasons for refusal, the proposal was amended to reduce the proposed building height from 12.2m to 11.7m (reduction of 0.5m), and reduce the floor space ratio from 0.82:1 to 0.752:1 (reduction 42.16sqm).

An amended written request under clause 4.6 of the Manly Environmental Plan seeking to justify the contravention of clause 4.3 Height of Buildings development standard and clause 4.4 Floor Space Ratio development standard was received as part of the review application.

Subsequently, an additional assessment for the amended building height and floor space ration has been undertaken below.

(1) Height of Building

Description of Building Height non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	11.7m
Percentage variation to requirement:	27.3%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

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:

Clause 4.3 – Height of Buildings 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.

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

- (b) 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, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,

- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

The existing building is currently over the height limit at 11.4m and the proposal demonstrates a minor increase to 11.7m. However, the increase in building height is a result of maintaining overall ridge height (RL48.96) of the proposal within the subject sites sloping topography. Therefore, the amended design minimises the building height and bulk and scale. Finally, it is provided that the amended design provides improvements to neighbouring residential amenity whilst retaining the visual presentation of the existing Augusta Road and Sheridan Place and streetscape.

It is accepted that the alterations and additions within the building footprint are appropriate due to the maintenance of the existing maximum ridge height and that the additional floor space is mostly contained within the roof so as to minimise the presentation of the building bulk. The amended design also provides a visual presentation of the built form stepping down the steep topography of the site, which is consistent with the characteristics of the surrounding area.

It is also agreed that the existing building height and steep slope of the property contributes to grounds to allow modifications in a form that is appropriately subservient to the existing building, particularly as the area over the building height will not result in any unreasonable impacts to any surrounding properties.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 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 Height of Buildings development standard and the objectives of the R1 General Residential. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposal provides for a loft style space within the existing roof of the multi unit dwelling building. Whilst there is a increase in the building height of the proposed works from 11.4m to 11.7m, the maximum ridge height of RL48.96 is unaltered.

The loft style space is not visually prominent to the Augusta Road or Sheridan Place street view, minimising potential building bulk and amenity impacts.

The proposed loft style space is within the existing roof area, with only a small portion of the roof creating additional non-compliance, as shown in figure 3 below.

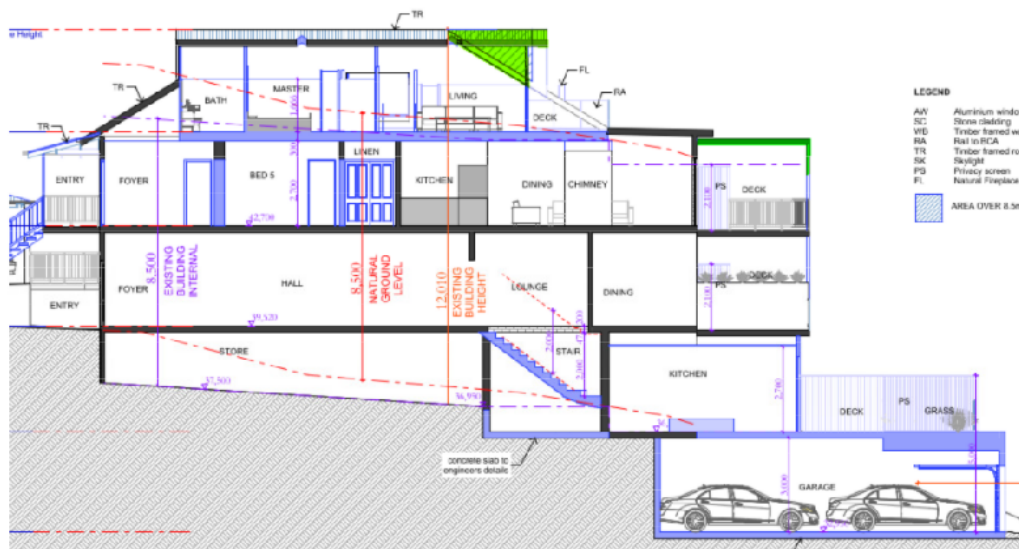


Figure 3. Shows the additional building height and built form of the proposed works (coloured in green).

The proposal maintains the existing ridge height of the building (RL48.96) so to appropriately maintain the character of the existing building and to maintain a desirable presentation in the

streetscape. The skylight window on the western elevation and the dormer style window additions on the eastern elevation provide a built form that is complementary with the existing roof structure, and architectural style within the area.

The proposals building height and gable roof design reflects the established built form character of the immediate Augusta Road area where multi-level, and non-complying building heights are prevalent due to the steep topography of the land.

As such, despite the non-compliance with the height of building development standard, the amended development is consistent with, and complementary to existing development in the locality, particularly in relation to height, roof form and character.

The development satisfies this objective.

b) to control the bulk and scale of buildings,

Comment:

The additional building height non-compliance is located at the northern edge of the roofline and wall plane of the loft floor and is relatively minor in size. The proposed loft style area within the existing roof space will provide a bulk and scale that provides appropriate visual presentation and minimises amenity impacts to the eastern and western neighbours.

The bulk and scale proposed development will continue to be a similar representation of the existing three (3) storey dwelling when viewed from properties to the north, east, south and west, as demonstrated in Figure 4 - 8 below.



Figure 4 *Proposed western elevation*



Figure 5. *Existing western elevation*



Figure 6. *Proposed eastern elevation*



Figure 7. *Existing eastern elevation*

Therefore, due to the topography of the site, the variety of built forms along Augusta Road and

Sheridan Place, and the similarity of the bulk and scale to the existing dwelling house, the non-compliance is considered to not unreasonably conflict with the height and scale of surrounding and nearby development. In this context, the proposed height is considered to be compatible.

The development satisfies the objective.

c) to minimise disruption to the following:

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

Comment:

The additional non-compliance component of the development do not impact the viewing angle from the properties to the west, being No.6 Augusta Road. The range of views available from the internal areas and balconies remains reasonably intact.

The additional height non-compliance does not have an unreasonable impact upon the existing views from No. 3 Sheridan Place due to the much lower placement/vantage point of this properties.

Therefore, the height non-compliance does not result in any unreasonable loss of views to, from, or between public or private spaces.

The development satisfies the objective.

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

Comment:

The application includes shadow diagrams (see Plan No. DA21 - DA23 dated 13 August 2019 as prepared by Sketch Arc). The diagrams indicate that the additional building height will not cast any unreasonable additional shadow over the neighbouring property to the east (No.2 Augusta Road) between 9.00am and 12.30pm on 21 June or the two properties to the west (No.6 Augusta Road, or No.3 Sheridan Place).

Given the finding in this clause, the development satisfies this objective.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

The proposal is designed to maintain the existing Norfolk Pine tree that exists on the site. The amended proposals high quality external finishes and open style balcony areas, and provides a more "stepped" look when viewed from neighbouring properties. The proposal reflects the established built form character of the immediate Augusta Road and Sheridan Place area where multi-level, variable stepped houses are prevalent, due to the steep topography of the land.

The Norfolk Pine tree has been retained and additional landscaping on the proposed garage roof

will soften and filter the built form, particularly from the Sheridan Place streetview.

The development satisfies this objective.

Zone objectives

The underlying objectives of the R1 General Density Residential zone are:

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

Comment:

The proposal provides additional floor space to the existing multi residential dwelling building. This ensures that the building continues to contribute to the housing needs of the community.

It is considered that the development satisfies this objective.

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

Comment:

The use of the building will remain as a multi dwelling residential building and this contributes to the variety of housing types and densities in the area.

It is considered that the development satisfies this objective.

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

Comment:

No applicable.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Density Residential zone.

Clause 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

(2) Floor Space Ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	FSR: 0.6:1 (363.84sqm)
Proposed:	FSR: 0.752:1 (456.14sqm)
Percentage variation to requirement:	25.3%

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, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

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:

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.*

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) 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, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the*

health and safety of their occupants,

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

The variation sought to the FSR and resultant built form outcome is compatible with that established by adjoining development and medium density development generally within the sites visual catchment. The variation to the floor space is located primarily within the existing footprint and roof area of the property, therefore having no adverse streetscape and residential amenity consequences and consistent with the character of the area.

The distribution of floor space provides for a reasonable view sharing outcome and the bulk and scale of the proposed works are consistent with the existing and future character in which medium density development displaying a recessive 3rd storey building element are characteristic.

It is agreed that there is sufficient environmental planning grounds to vary the development standard for the proposed design which is consistent in the context of surrounding development and adequately minimises the presentation of bulk to the street, on a site which an older existing building will be substantially retained. The site is surrounded by residential properties of varying density, bulk and scale. With this in mind, it can be said that the proposed development will maintain an appropriate visual relationship with the existing character and landscape of the area.

The extent of non-compliance does not result unreasonably upon the views or amenity of adjoining properties. The location of the non-compliant floor area is primarily within the existing lower ground footprint and the roof area (loft style). The orientation of the building allows for the additions to be suitably separated from the street and adjoining neighbors to provide an appropriate outcome for amenity and an appropriate visual presentation.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 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 R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The existing Augusta Road and Sheridan Lane streetscape contains a mix of development including several multi storey residential style buildings in close vicinity to the subject site. With this in mind, it cannot be said that the proposed development is not consistent with the existing character of the streetscape in regards to its bulk and scale.

The proposed additional floor space on the lower ground floor, and within the loft space of the roof provides a design that involves a change to the roof style rather than an additional storey that is compatible with the character of the surrounding buildings. Additionally, the dormer window additions to the roof are located above elevations that face away from the street to ensure that the presentation of bulk and scale will be adequately minimised so as to maintain a desirable streetscape character.

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

Comment:

The proposed additions are primarily within the existing building footprint and maintain the existing maximum building ridge so as to ensure that surrounding landscape and townscape features would not be unreasonably obscured. Therefore, this non-compliant concentration of development within the lower floor, and roof of the site will not reasonably obstruct beach and coastline views currently enjoyed from the adjoining dwellings.

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

Comment:

The proposal maintains open space and landscaping to surround the site and provides additions to the roof that are sufficiently subservient to the existing building. This ensures that the existing building and site will continue to be complementary with other similar sites and buildings within the vicinity.

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

Comment:

The location of the additions within the existing footprint, with compliant side setbacks to the neighbouring dwelling and with a compliant setback from the street, provides a situation in which impacts to adjoining land and the public domain are minimised.

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

Comment:

Not applicable.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposal provides additional floor space to the existing multi dwelling building. This ensures that the building continues to contribute to the housing needs of the community.

It is considered that the development satisfies this objective.

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

Comment:

The use of the building will remain as a multi dwelling residential building and this contributes to the variety of housing types and densities in the area.

It is considered that the development satisfies this objective.

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

Comment:

Not applicable.

Conclusion:

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

Clause 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 Floor space ratio Development Standard is assumed by the Local Planning Panel

6.2 Earthworks

The proposal will see some excavation of the site, however all works will be carried out as per the recommendations of the amended Geotechnical Assessment prepared by White Geotechnical Group, Reference No. J601A, dated 28 November 2018. The recommendations of the Assessment will ensure that the amenity and safety of the subject and neighbouring dwellings will be protected.

Following detailed assessment of the proposed development, the consent authority can be satisfied of the following:

- The proposal is not likely to cause disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development as listed in clause 3(a)
- The proposal is not likely to effect of the development on the likely future use or redevelopment of the land as listed in clause 3(b)
- The proposal is not likely to cause disruption to the quality, source or destination of the fill or the soil to be excavated, or both as listed in clause 3(c) & (e)
- The proposal is not likely to effect of the development on the existing and likely amenity of adjoining properties as listed in clause 3(d)
- There are no relics on the site, therefore clause 3(f) is not applicable
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(g)
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(h)

As such, the proposal is considered to be consistent with the provision and the matters prescribed by clauses 1, 2 and 3 of 6.2 Earthworks within the Manly Local Environment Plan 2013.

Accordingly, Councils Landscape and Biodiversity officers have concluded that the impact of the earthworks will not unreasonably impact or disrupt vegetation on the property.

6.4 Stormwater management

The proposal includes amendments to the stormwater management on the site. Following detailed assessment of the proposed development, the consent authority can be satisfied of the following:

- The proposal is reasonably designed to maximise the use of water permeable surfaces on the land as listed in clause 3(a)
- The proposal includes on-site stormwater retention for use as listed in 3(b)
- The proposal has been reasonably designed avoid adverse impacts on the matters listed in clause 3(c)

As such, the proposal is considered to be consistent with the matters prescribed by clauses 1, 2 and 3 of 6.2 Earthworks within Manly Local Environment Plan 2013.

The application has been referred to Council's Development Engineers who have assessed the proposed provisions for stormwater. Council Development Engineers are satisfied with the stormwater provisions, subject to conditions of consent.

6.8 Landslide risk

The site is identified as being within the G4 on the Landslip Hazard Map in MDCP, and the objectives of this clause are applicable in relation to the proposal.

The original proposal is accompanied by a Geotechnical Assessment Report, prepared by White Geotechnical Group, Reference No. J1601A, dated 19 December 2017 (revised 28 November 2018).

Following detailed assessment of the proposed development, the consent authority can be satisfied of the following:

- The proposal design has taken into account the existing layout and access as listed in clause 3 (a)
- The proposal is not likely to effect unreasonably impact the site or the surrounding sites through the design of the proposal, and the recommendations of the the Geotechnical Assessment, including the construction methods are to be included as consideration of the consent, therefore satisfying the matters as listed in clause 3(b)
- The proposal is not likely to cause disruption to the quality, source or destination of the fill or the soil to be excavated, or both as listed in clause 3(c)
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(d)
- There proposal has reasonably addressed the existing geotechnical constraints of the site as listed in clause 3(e)
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(f)
- The proposal has been designed, sited and will be managed, in accordance with the recommendations of the Geotechnical Assessment, to avoid adverse impacts on the matters listed in clause 4(a)(b) & (c)

As such, the proposal is considered to be consistent with the matters prescribed by clauses 1, 2, 3 and 4 of 6.8 Landslide Risk, within Manly Local Environment Plan 2013.

6.12 Essential services

The proposal will provide essential services as part of the proposal.

Following detailed assessment of the proposed development, the consent authority can be satisfied of the following:

- The proposal has been designed to provide the services listed in clause 1(a)(b) & (c)
- The proposal has been designed, sited and will be managed stormwater matters listed in clause 3(d)
- The proposal has been designed, sited to provide reasonable vehicle access as listed in clause 3(e)

As such, the proposal is considered to be consistent with the matters prescribed by clauses 1 and 2 of

6.12 Essential Services, within Manly Local Environment Plan 2013.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 606.4sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	East: 8m (based on gradient 1:4)	7.2m - 10.3m 3.2m Garage	Existing -	Yes Yes
	West: 8m (based on gradient 1:4)	7.7m - 9m Dwelling 3.2m Garage	Existing -	Yes Yes
4.1.2.2 Number of Storeys	2	4	50%	No
4.1.2.3 Roof Height	Height: 2.5m	3.2m	28%	No
	Pitch: maximum 35 degrees	32 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	1.6m - 1.8m Carport 4.8m Entry Stairs 7.5m Entry deck	Existing - -	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.4m - 3.43m (based on eastern wall height)	1.7m (Eastern)	Existing	No
	3.0m Garage (eastern/western wall height)	1m Garage	-	Yes
	1.9m - 2.8m (based on the western wall height)	1.6m (Western)	Existing	No
	Windows: 3m	Within 3m	-	No
	Secondary street frontage: Prevailing setback / 6m	6m, consistent with prevailing setback	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (333.52sqm) of site area	44.2% 268.2sqm	19.7%	No
	Open space above ground <25% (67.05sqm) of total open space	46.5% 162.7sqm	70%	No
4.1.5.2 Landscaped Area	Landscaped area 35% of total open space	39% 105.5sqm	-	Yes
	3 native trees	1 trees	-	No
4.1.5.3 Private Open Space	12sqm per dwelling	Each unit > 12sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.9m	11%	No
Schedule 3 Parking and Access	Dwelling 5 spaces	6 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The amended design for the loft floor level enables additional floor space that is not visually dominate, as the floor area is located within the roof footprint. The property will continue to present as a two storey dwelling house from Augusta Road, and a three storey structure from the Sheridan Place streetview.

The amended design removes the previous significant vertical bulk when viewed from Sheridan Place, and contributes to an improved stepped profile to the upper floors to provide visual relief which relates to the sloping topography of the site.

The proposal also includes the construction of new garages and storage area on the secondary street

frontage of Sheridan Place. Sheridan Place has a presence of garages and parking structures presenting to the street, most along the subject sites boundary line. However, there is no amendment to the proposed garages.

The visual dominance of the proposed car parking structures is relieved by the architectural design and form of the garages itself, therefore the presentation to the Sheridan Place streetscape frontage is consistent with predominant streetscape in this regard.

Therefore, the amended proposal provides an opportunity to enhance the current streetscape, and whilst the proposed design may mimic what currently exists, it is more sympathetic and responsive to the character of the local area and maintains the form of other development within the visual catchment of the site.

3.4.1 Sunlight Access and Overshadowing

The amended proposal will continue to provide suitable solar access to both outdoor living areas and living rooms windows of the adjoining eastern and western properties.

3.4.2 Privacy and Security

The amended development has appropriately resolved overlooking of the western adjoining dwellings arising from the proposed upper floor rear balconies. The ground floor and upper floor will continue the splayed balcony design, with the inclusion of a privacy screen considered to be an appropriate architectural response to mitigate overlooking of the existing primary area of private open space of the adjoining property to the west.

The removal of the external staircase, as agreed by the adjoining western neighbours, will significantly decrease the ability for direct overlooking, and improve the privacy and amenity to the neighbours residents and occupants of the subject property.

The revised design has also removed a dormer window from the eastern elevation, reducing the potential for overlooking from this window.

There continues to be concern to the amenity impacts of the 1.8m privacy screen located on the western elevation above the proposed garages. The privacy screen as a result of the amended proposal will now be located 2m from the western side boundary.

The screen was proposed to ensure there is no direct line of sight between the new grassed area over the garages, and the adjoining site of No.3 Sheridan Place. Considering this screen has the potential to create additional bulk and scale, and amenity impacts, it will be conditioned to be removed, and the area is to be conditioned to be a landscaped area only, removing the ability of direct overlooking into the western neighbouring property.

Therefore, the amended proposal is considered to reflect an appropriate balance between the reasonable privacy between adjoining properties.

3.4.3 Maintenance of Views

Submissions for development application DA2019/0124 were received from the adjoining property owner of 6 Augusta Road, raising concerns with potential view loss arising from the proposed development.

A number of adjoining dwellings currently obtain views over the subject site, including but not limited to

the dwellings at No.6 Augusta Road, and 3 Sheridan Place, Manly. During the course of the assessment, the assessing officer undertook inspections of these properties to appreciate the views currently enjoyed, and to ascertain the likely impact of the development.

Despite the impact upon views being raised as a reason for the refusal of DA2019/0124, the view loss assessment concluded that the proposal will not unreasonably impact upon the highly valued views of the coastline in a north-easterly direction, with the overall impact upon views on No. 6 Augusta Road, Manly determined to be negligible to minor.

As a result of the amended design one submission was received from 3 Sheridan Place in regards to view loss from the proposed privacy screen on the western elevation above the proposed garages.

Therefore, it can be determined that the reduction in the northern elevation roof line, combined with the reduction of the loft area, has removed any additional building bulk from the existing view lines to the north-east. Meaning, that the existing view lines from No. 6 Augusta Road will be maintained.

As view loss was listed as a reason for refusal, the likely impacts of the amended design upon the dwellings inspected as part of the subject application are considered individually, as follows.

Merit consideration:

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

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

Comment:

The proposed development will result in negligible loss of ocean views towards North Steyne from the adjoining western property of No.6 Augusta Road, and a minor loss of filtered view towards North Steyne from the western property of No.3 Sheridan Place. Therefore, the impacts upon views currently enjoyed is considered to be reasonable.

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

Comment:

The proposal results in a disruption of views from neighbouring properties. The level of view loss is not unreasonable and has been assessed below with regards to the planning principle established by the NSW Land and Environment Court.

An assessment of view loss has also been undertaken with reference to the Views Principle established by the NSW Land and Environment Court as follows:

1. Nature of the view affected

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

Comment:

No.6 Augusta Road

The nature of the views affected are towards North Steyne ocean views. The views towards the north-east are obtained over the common side boundary.

No.3 Sheridan Place

The nature of the views affected North Steyne ocean views over a north-east common side boundary.

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:

No.6 Augusta Road

The current views are obtained from a standing position from living rooms, bedrooms and private open space areas (balconies) over multiple elevated floors. The portion of the amended development that impacts upon the view changes as you move across the width of the property.



Photo 1- First floor bedroom window



Photo 2- First floor balcony



Photo 3- Ground floor private open space

No.3 Sheridan Place

The views from this property are over the north-eastern side boundary. All available views are obtained from a standing position within the living room, the bedroom and the rear balcony. The portion of the development that impacts upon the view changes as you move across the width of the property.



Photo 4 - First floor Living Room



Photo 5 - First Floor bedroom

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 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Comment:

No.6 Augusta Road

As evident from the view loss assessment on the site, the proposal will have a negligible impact upon the highly valued ocean views from most areas in a north-easterly direction. The entirety of this portion of the of the ocean from the bedroom is considered to be minor. The first floor balcony area will retain existing views to the ocean, the level of impact is negligible. Therefore, the impact upon views is considered to be negligible to minor.

No.3 Sheridan Place

As evident from the view loss assessment on the site, the proposal will have a negligible impact upon the highly valued ocean views from the balcony and a minor impact from the lounge room north-easterly direction. The bedroom will lose a portion of the ocean views, however these view lines are currently obscured by vegetation. Therefore, the view loss is considered to be to be minor.

4. Reasonableness of the proposal 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:

The proposed development is non-compliance with both the Height of Buildings and Floor Space Ratio development standards under Clause 4 of the Manly LEP. However, these additional areas of non-compliance do not impact on the current view lines from the western adjoining properties. The amended design combined with a condition to remove the privacy screen, will ensure the existing views corridors from living areas and balcony areas are maintained for both properties by reducing the bulk and scale of the proposal, maintaining an appropriate corridor and spatial distance in the north of the site and ensuring additional bulk is maintained at lower floor levels and within within the existing roof space. As such, the impact is considered to be reasonable in the circumstances of the proposal.

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

Comment:

Overall, the amended design has been designed to minimise the loss of views from adjoining properties, and as such, the proposed development is considered to be consistent with the objectives and requirements of this development control.

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

4.1.5 Open Space and Landscaping

There is no change to the provision of total open space as a result of the amended proposal. The amended proposal will ensure that significant and important environment features such as the Norfolk Pine are to remain onsite, and the amended proposal will not result in any adverse impacts upon existing landscaping and will result in an enhanced landscape outcome on the site.

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

There is no change to the design of the proposed garages and driveways. The garages continue to be inconsistent with the provisions of clause 4.1.6.1 of MDCP 2013 which prescribes maximum width of any garage not exceed 50 percent of the frontage, up to a maximum width of 6.2m. However, the design, setback and location of the garages minimise the visual impact on the streetscape, and these garages are consistent with the existing park structures that dominate the Sherian Road streetscape.

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 Section 7.12 Contributions Plan 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$9,900 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$990,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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

This Section 8.2 Review Application has been assessed having regard to the reasons for refusal and the previous assessment in relation to Section 4.15 of the Environmental Planning and Assessment Act 1979, the MLEP 2013, MDCP and the relevant codes and policies of Council. This assessment has taken into consideration the revised plans, revised Statement of Environmental Effects, amended clause 4.6 of the Manly Local Environment Plan 2013 seeking to justify a contravention of clause 4.3 Height of Buildings development standard and clause 4.4 Floor Space Ratio development standard, other documentation supporting the application and public submissions.

The amendments to the proposal and new documentation have attempted to resolve the built form, character and site suitability issues forming the basis of the reasons for refusal of the Development

Application. The applicant's written request under clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of clause 4.3 Height of Buildings development standard and clause 4.4 Floor Space Ratio development standard has adequately addressed and demonstrated that compliance with the standard is unreasonable and sufficient environmental planning grounds.

The critical concerns relating to the building bulk relationship with the sloping topography, and the consistency with the character of the area has been addressed through the reduction in the FSR of the loft level. Privacy, amenity and view impacts of the proposal to the western adjoining properties have also been addressed through the reduction in built form.

One (1) submission was received in response to the notification of the current application. The issues raised in the submissions have been addressed in the "Public Notification Section" of this report and appropriate conditions have been applied to address these concerns.

Accordingly, the revised proposal can be supported upon review as the proposal satisfies the fundamental planning controls applying to this site and this type of development. The site is considered suitable and the proposal displaying reasonable scale and density compatible with the surrounding streetscape.

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

RECOMMENDATION

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to REV2019/0049 for Review of Determination of Application DA2019/0124 Alterations and additions to the existing multi dwelling housing on land at Lot 2 DP 2428, 4 Augusta Road, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Analysis Plan DA3	13/08/2019	sketchArc
Garage Floor Plan DA4	13/08/2019	sketchArc
Lower Floor Plan DA5	13/08/2019	sketchArc
Ground Floor Plan DA6	13/08/2019	sketchArc
Upper Floor Plan DA7	13/08/2019	sketchArc
Loft Floor Plan DA8	13/08/2019	sketchArc
Roof Plan DA9	13/08/2019	sketchArc
North and South Elevation DA10	13/08/2019	sketchArc
East Elevation DA11	13/08/2019	sketchArc
West Elevation DA13	13/08/2019	sketchArc
Section A-A DA14	13/08/2019	sketchArc
Section B-B DA15	13/08/2019	sketchArc
Section C-C DA16	13/08/2019	sketchArc
Section D-D DA17	13/08/2019	sketchArc

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Comments	28/11/2018	White Geotechnical Group
Geoetchnical Investigation	19/12/2017	White Geoetchnical Group
Arboricultural Impact Assessment	13/01/2019	Peake Arboricultural
NCC Assessment Report	31/01/2019	Private Building Certifiers (NSW) Pty Ltd

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. 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.

3. **Certificate of Compliance**

Provide the certifier a certificate from an appropriately qualified person indicating the system is compliant with all relevant legislation, Building Code of Australia, Australian Standards, Specifications and manufacturer requirements.

Reason: To ensure the system operates in a legislatively compliant manner

4. **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

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$9,900.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$990,000.00.

The monetary 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. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

6. **Security Bond**

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

7. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

8. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- a) The privacy screen on the western elevation, on the roof of the garage is to be removed from the approved plans.
- b) The landscaped and grassed area on the roof of the garages is to be entirely a non-trafficable landscaped area.

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.

9. **Building Code of Australia Upgrade requirements and Fire Safety Upgrade**

The Building Code of Australia works and fire upgrading measures to upgrade the building as detailed and recommended in the Building Code of Australia Audit Report prepared by Private Building Certifiers, dated 31 January 2019, Report Ref No. 173210B are to be carried out in full to the building.

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

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

10. **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 Principal Certifier prior to the issue of any Interim or 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.

11. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. 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 Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

12. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

13. **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.

14. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- o "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- o Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. **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.

16. **Tree protection**

- A) Existing trees and vegetation shall be retained and protected as follows:
- i) all trees and vegetation within the site, excluding exempt trees under the relevant planning instruments or legislation,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation.
- B) Tree protection shall be generally undertaken as follows:
- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4,
 - ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
 - iii) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,
 - iv) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a Project Arborist on site,
 - vi) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
 - vii) excavation for stormwater lines is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist, to provide for root protection measures,
 - viii) should either or all of v), vi) and vii) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - ix) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,
 - x) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.
- Reason: to retain and protect significant planting on development and adjoining sites.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**17. Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public Safety.

18. Vehicle Crossings

The Applicant is to construct one vehicle crossing 5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. 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.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

19. Waste Management During Development

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

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

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

20. Project Arborist

A Project Arborist with AQZ Level 5 qualification in horticulture is to be appointed to supervise and certify tree protection measures identified in the Arboricultural Impact Assessment report prepared by

Peake Arboriculture for the following tree:

tree 1 - Norfolk Island Pine,

any other site or adjoining property tree that may be impacted by the works.

The Project Arborist is to supervise and certify tree protection works as proposed in the Arboricultural

Impact Assessment report, including documentation certifying that project arborist supervision, as listed

in section 8 - Recommendations, and section 9.2 Development Stage, have been carried out accordingly.

The Project Arborist is to supervise all excavation and construction works near all trees, including

recommending the construction methods near existing trees to protect tree roots, trunks, branches and

canopy. Photographic documentation of the condition of all trees to be retained shall be recorded,

including at commencement, during the works and at completion.

Reason: to ensure the protection of the existing landscape amenity.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE****21. Condition of retained vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by the Project Arborist shall be submitted to the Certifying Authority assessing the health and impact of trees and vegetation required to be retained as a result of the proposed development, including the following information:

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

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

22. Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

23. Installation of solid/fuel burning heaters

Installation work must be carried out by an appropriately experienced and qualified person and in accordance with the relevant provisions of AS2918:2001 – Domestic Solid Fuel Burning Appliances – Installation

Reason: To ensure the installation is completed in a legislatively compliant manner.

24. Certification of solid fuel burning heaters

A certificate from an appropriately qualified person indicating the system is compliant with all relevant legislation, Building Code of Australia, Australian Standards, Specifications and manufacturer requirements is to be submitted to the Certifier prior to the operation of the solid fuel heater.

Reason: To ensure the system operates in a legislatively compliant manner.

25. Waste Management Confirmation

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

26. House / Building Number

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

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

27. **Maintenance of solid fuel heaters**

The owner/occupier shall ensure servicing of the heater is maintained according to the manufacturer's specifications.

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

28. **Operation of solid fuel burning heaters**

You are requested to take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. Such measures should include:

- Using dry seasoned hardwood
- Storing wood in a dry well ventilated place
- Having a hot and well oxygenated fire
- Ensuring that the chimney flue is clean
- Checking the chimney at different stages of the fire to see if there is any smoke

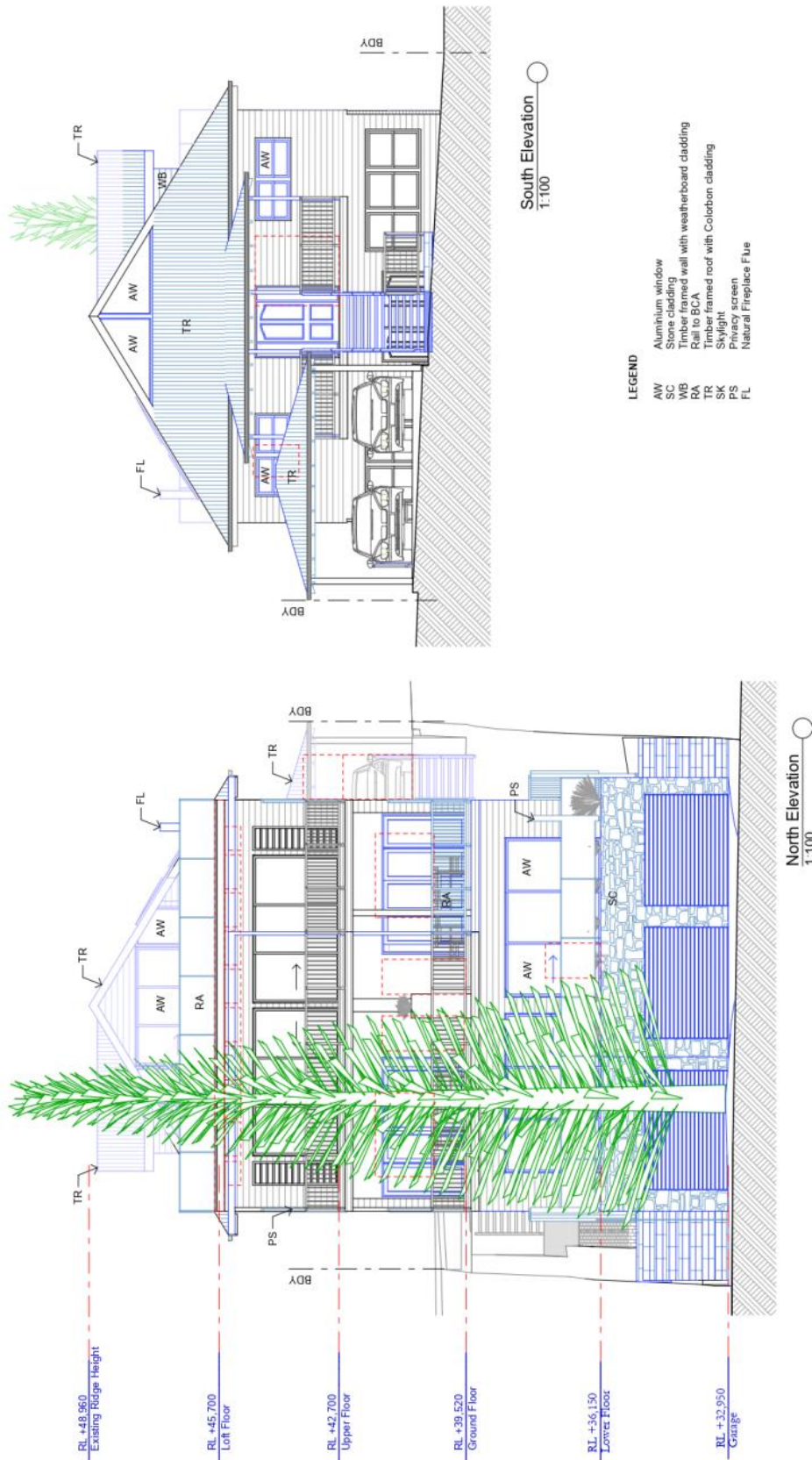
Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

29. **Outdoor Lighting**

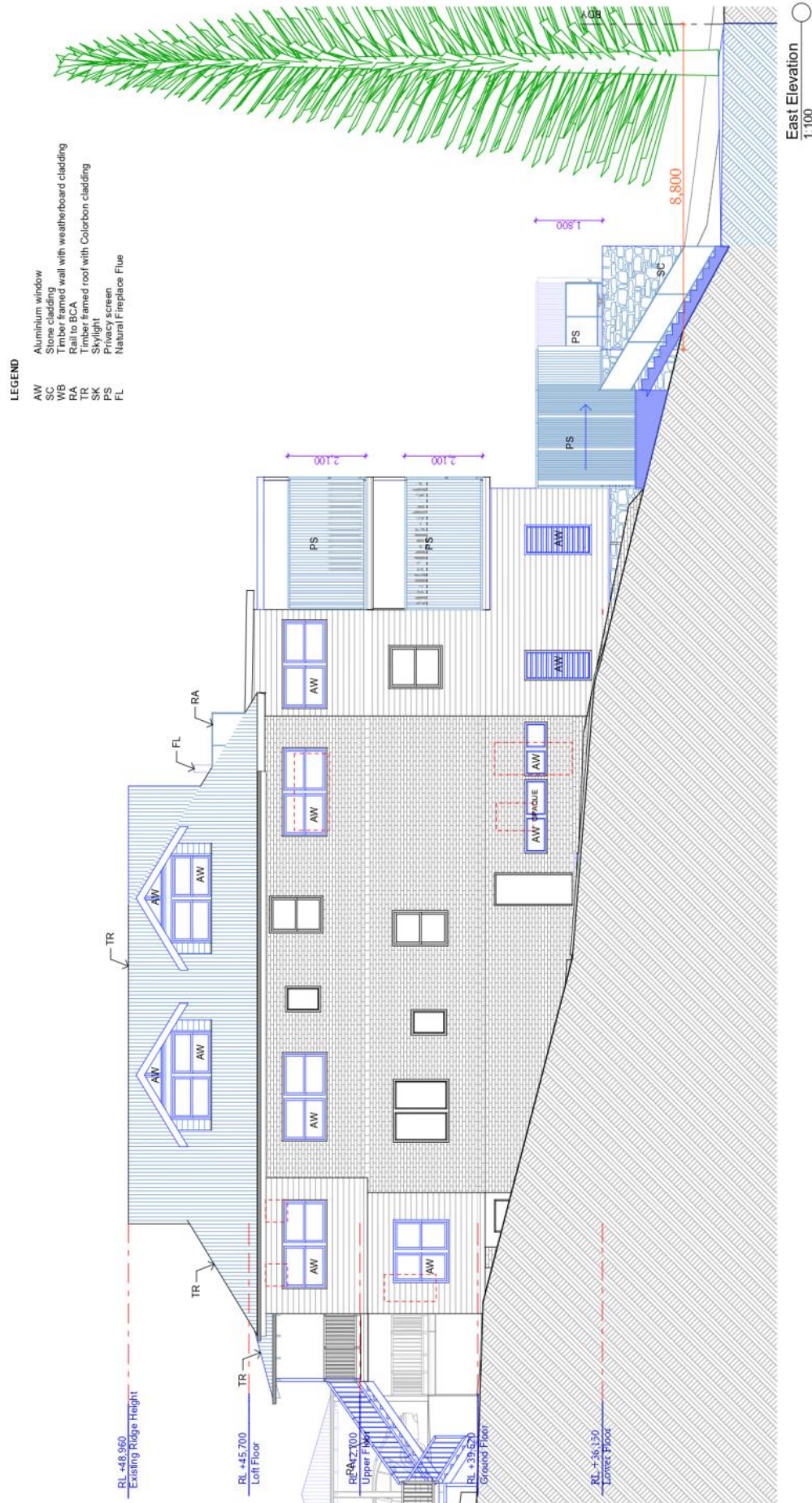
All outdoor lighting on the western boundary is to be directed away from the adjoining property boundaries and must comply with AS/NZS 4282 'Control of obtrusive effects of outdoor lighting'.

Reason: to maintain the amenity of the adjoining properties.





<p>DO NOT SCALE DRAWINGS. CHECK ALL DIMENSIONS ON SITE. FIGURED DIMENSIONS TAKE PRECEDENCE.</p> <p>The builder shall check and verify all dimensions given on drawings and construct accordingly. Drawings are for information only and are not to be used for construction purposes until issued by the Architect for construction.</p>			<p>PROJECT 4 Augusta Rd, Manly, 2095, NSW Additions & Alterations LOT 2 in Section 11 in DP 2428 - 606 4m2</p>		<p>CLIENT Private</p>		<p>DATE 13/08/19 STAGE 82A DRAWING NO DA10</p>		<p>SCALE 1:100@A3 DRAWN/DESIGNED PB / MP PROJECT NUMBER 1635 ISSUE</p>	
			<p>sketchArc P o B o x 377 M a n l y 1655 m : 0422 521 871 e : power@sketcharc.com.au w : www.sketcharc.com.au</p>		<p>sketchArc</p>		<p>REV DATE DESCRIPTION</p>		<p>sketchArc</p>	



sketchArc P o B o x 3 7 7 M a n l y 1 6 5 5 e : p o w e r @ s k e t c h a r c . c o m . a u w : w w w . s k e t c h a r c . c o m . a u		PROJECT: 4 Augusta Rd, Manly, 2095, NSW Additions & Alterations LOT 2 in Section 11 in DP 2428 - 606 4m2		CLIENT: Private		DRAWING NO: DA11		DATE: 13/08/19 STAGE: 82A PROJECT NUMBER: 1635 SCALE: 1:100@A3 DRAWING/ISSUE: PB / MP	
		DO NOT SCALE DRAWINGS. CHECK ALL DIMENSIONS ON SITE. FIGURED DIMENSIONS TAKE PRECEDENCE. The builder shall check and verify all dimensions. Drawings are for information only and are not to be used for construction purposes. Drawings shall not be used for construction purposes until issued by the Architect for construction.		REV DATE DESCRIPTION		008 1		8,800	



DO NOT SCALE DRAWINGS. CHECK ALL DIMENSIONS ON SITE			
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The builder must check and verify all dimensions on site and verify all errors and omissions to the client before construction commences.		Drawings shall not be used for construction purposes until issued by the Architect for construction.	
PROJECT: 4 Augusta Rd, Manly, 2095, NSW Additions & Alterations LOT 2 in Section 11 in DP 2428 - 606 4m2		CLIENT: Private	
sketchArc Po Box 377 Manly 1655 m : 0422 521 871 e : power@sketcharc.com.au w : www.sketcharc.com.au			
DETAILS: RPA DA SCALE 1:100 @A3 1635 STAGE E2A DRAWING DESIGNED: PB / MP FORWARDING NO: DA13			
		PROJECT NUMBER: ISSUE:	

Vaughan Milligan Development Consulting Pty Ltd

APPENDIX 1
CLAUSE 4.6 – BUILDING HEIGHT

Vaughan Milligan Development Consulting Pty Ltd

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

4 AUGUSTA ROAD, MANLY

**FOR PROPOSED ADDITIONS AND ALTERATIONS TO THE EXISTING MULTI DWELLING
DEVELOPMENT INCLUDING CONSTRUCTION OF A NEW GARAGE AND CARPORT WITH
ASSOCIATED LANDSCAPING**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM BUILDING HEIGHT
AS DETAILED IN CLAUSE 4.3 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013**

For: Additions and alterations to the existing multi dwelling development including construction of a new garage and carport and associated landscaping
At: 4 Augusta Road, Manly
Owner: Oliver & Jennifer Rees
Applicant: Oliver & Jennifer Rees
C/- Vaughan Milligan Development Consulting Pty Ltd

1.0 Introduction

This written request was made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013).

2.0 Background

Clause 4.3 restricts the height of a building within this area of the Manly locality and refers to the maximum height noted within the "*Height of Buildings Map*."

The relevant building height for this locality is 8.5m and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

Due to the siting of the existing building and sloping topography of the site, the proposed new works will be up to approximately 11.4m in height, which results in a variation of 2.9m or 34.1%.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

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3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118* have been considered in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The development will achieve a better outcome in this instance as the site will provide for alterations and additions to an existing multi dwelling development which is consistent with the stated Objectives of the R1 General Residential Zone, which are noted as:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

As sought by the zone objectives, the proposal will provide for alterations and additions to an existing multi dwelling development which are sensitive to the location and the topography of the locality.

The proposal includes modulated wall lines and a consistent palette of materials and finishes in order to provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum height control, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood.

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5.0 Onus on Applicant

Clause 4.6(3) provides that:

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.*

This submission has been prepared to support our contention that the development adequately responds to the provisions of 4.6(3)(a) & (b) above.

6.0 Justification of Proposed Variation

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 11* & *Samadi v Council of the City of Sydney [2014] NSWLEC 1199*.

Paragraph 27 of the judgement states:

Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The site is located in the R1 General Residential Zone. The objectives of the R1 zone are noted as:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

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Comments

It is considered that notwithstanding the extent of the non-compliance with the maximum building height control (2.9m), the proposed additions to the existing building will be consistent with the individual Objectives of the R1 General Residential zone for the following reasons:

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

The R1 General Residential Zone contemplates low density residential uses on the land. The housing needs of the community are appropriately provided for in this instance through the proposed additions to the multi dwelling development which will provide form an appropriate level of family accommodation and in a form which respect the predominant height and scale of the surrounding dwellings.

The development will see an addition to the upper floor level which will present non-compliance with the building height control of up to 2.9m, with the small Dutch gable roof and dormer extensions considered to suitably reduce the visual bulk of the dwelling.

Further, the modulation of the building elevation, together with the new works being primarily within the existing roof volume will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

The compatible form and scale of the new works will meet the housing needs of the community within a multi dwelling development which is a permissible use in this low density residential zone.

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

The new works will provide for additions to an existing multi dwelling housing development, which will add positively to the character and housing choice in the immediate area

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

The development does not suggest any alternate land uses and this Objective is not directly relevant to the subject single residential proposal.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

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Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 4.3 are articulated at Clause 4.3(1):

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

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) to control the bulk and scale of buildings,*
- (c) to minimise disruption to the following:*
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) views between public spaces (including the harbour and foreshores),*
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Comments

Despite the minor variation to the maximum building height, the proposed alterations and additions are considered to be in keeping with the relevant Objectives of Clause 4.3 for the following reasons:

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

The Objective of Clause 4.3 (1)(a) seeks to ensure buildings, by virtue of their height and scale are consistent with the desired future streetscape character of the locality.

The surrounding area is predominantly characterised by two – three storey development, often located over basement garages and service rooms.

The proposal seeks to accommodate the works at each level of the existing multi dwelling development, with a new loft level sited within the roof space, with dormers and a Dutch gable to provide for improved amenity.

The overall building height respects the surrounding character and the design seeks to minimise the visual height by providing for increasing setbacks to the upper floor level.

The proposed external colour and materials palette utilises darker finishes to the upper floor level and is intended to ensure that the building's visual height and scale is further minimised.

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

The proposed new works will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

Further, the modulation of the front façade and building elevations where visible from the public domain minimises the visual impact of the development.

The proposal presents a compatible height and scale to the surrounding development and the articulation to the building facades and minimal changes to the roof form will suitably distribute the bulk of the new floor area.

(c) to minimise disruption to the following:

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

Due to the general slope of the site towards the north, the properties to the west of the site enjoys views towards the north-east over Manly towards the beach. Views past the site are generally along the rear, northern setback alignment.

The proposal will provide for increasing setbacks to the upper floor level which will allow for suitable views to be maintained through and over the site.

Views from the surrounding public spaces are not adversely affected.

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

As the works are largely within the existing building volume, the shadow analysis prepared by SketchArc confirms that the north facing living windows and the external private recreational spaces of the adjacent neighbours will continue to receive appropriate solar access.

The increasing setbacks to the proposed upper floor and minor changes to the roof form will assist in minimising the effects of overshadowing and will appropriately maintain the neighbour's amenity.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

The site is not within a recreation or environmental protection zone and is well removed from the foreshore area. The site is not within a conservation area or in the vicinity of any heritage items.

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The proposal is intended to reflect the predominant scale and form of the surrounding development in Augusta Street and will reflect the existing multi dwelling and single dwelling uses in the vicinity.

Despite the variation to the building height control which occurs as a result of the sloping

Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

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

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

In the *Wehbe* judgment (*Wehbe v Warringah Council* [2007] NSWLEC 827), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded and that approval of the Objection may be consistent with the aims of the policy. These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

Comment: Yes. Refer to comments under 'Justification of Proposed Variation' above which discusses the achievement of the objectives of the standard.

2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

Comment: It is considered that the purpose of the standard is relevant but the purpose is satisfied.

3. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

Comment: Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development.

Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

Comment: Not applicable.

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5. *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Comment: The development standard is applicable to and appropriate to the zone.

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

Precondition 4 - To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

Council's controls in Clause 4.3 provide a maximum overall height of 8.5m for the subject development.

Due to the existing overall building height and sloping topography of the site, the proposed new works will be up to approximately 11.4m in height.

The development is justified in this instance for the following reasons:

- Compliance with the height control is constrained by the siting of the building and sloping topography of the site.
- The proposed development is designed to respect the sloping topography of the site. The development does not result in a significant bulk when viewed from either the street or the neighbouring properties, and will not exceed the existing maximum ridge height of the dwelling.
- The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity has a wide range of architectural styles and the given the variety in the scale of development, this proposal will reflect a positive contribution to its streetscape.
- The extent of the proposed new works where they are not compliant with Council's maximum height control do not present any significant impacts in terms of view loss for neighbours, loss of solar access or unreasonable bulk and scale.

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum building height.

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

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It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the *Four2Five* decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of this year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means:

"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".

Accordingly, when assessed against the relevant Objects of the Environmental Planning & Assessment Act 1979, (NSW) outlined in s1.3, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The external form of the proposed dwelling is stepped to follow the sloping topography of the site and results in a dwelling which is compatible in scale to its surrounding neighbours, which promotes the orderly & economic use of the land.
- Similarly, the proposed development will provide for an appropriate level of family accommodation and improved amenity within a built form which is compatible with the streetscape of Augusta Road, which also promotes the orderly and economic use of the land.
- The proposal is considered to promote good design and amenity to the local built environment as appropriate views, solar access and privacy will be maintained for the neighbouring properties.

The above are the environmental planning grounds which are the circumstance which are particular to the development which merit a variation to the development standard.

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7.0 Conclusion

This development proposed a departure from the maximum building height development standard, with the proposed alterations and additions to the existing multi dwelling development to provide a maximum overall height of 11.4m.

This variation occurs as a result of the siting of the existing building and sloping topography of the site.

This written request to vary the maximum building height specified in Clause 4.3 of the Manly LEP 2013 adequately demonstrates that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height control would be unreasonable and unnecessary in the circumstances of this case.



VAUGHAN MILLIGAN
Town Planner

Vaughan Milligan Development Consulting Pty Ltd

APPENDIX 2

CLAUSE 4.6 – FLOOR SPACE RATIO

4 Augusta Road, Manly

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WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

4 AUGUSTA ROAD, MANLY

**FOR PROPOSED ADDITIONS AND ALTERATIONS TO THE EXISTING MULTI DWELLING
DEVELOPMENT INCLUDING CONSTRUCTION OF A NEW GARAGE AND CARPORT WITH
ASSOCIATED LANDSCAPING**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM FLOOR SPACE RATIO
AS DETAILED IN CLAUSE 4.4 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013**

For: Additions and alterations to the existing multi dwelling development including construction of a new garage and carport and associated landscaping
At: 4 Augusta Road, Manly
Owner: Oliver & Jennifer Rees
Applicant: Oliver & Jennifer Rees
C/- Vaughan Milligan Development Consulting Pty Ltd

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard it is requested Council support a variation with respect to compliance with the maximum floor space ratio as described in Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013).

2.0 Background

Clause 4.4 restricts the floor space ratio of a building within the subject locality and refers to the maximum floor space ratio noted within the "*Floor Space Ratio Map*."

The maximum floor space ratio for this locality is 0.6:1 and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposal seeks to provide a floor space ratio of 456.14m² or 0.75:1 which presents a variation to the control of 92.3m² or 253%.

The controls of Clause 4.4 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

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3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118* have been considered in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The development will achieve a better outcome in this instance as the site will provide for alterations and additions to an existing multi dwelling development which is consistent with the stated Objectives of the R1 General Residential Zone, which are noted as:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

As sought by the objectives of the R1 zone, the proposal will provide for construction of alterations and additions to an existing multi dwelling development, to meet the housing needs of the multi dwelling development's occupants.

The new works provide a suitable bulk and scale, with a consistent palette of materials and finishes, in order to provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum floor space ratio control, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood.

Vaughan Milligan Development Consulting Pty Ltd

5.0 Onus on Applicant

Clause 4.6(3) provides that:

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.*

This submission has been prepared to support our contention that the development adequately responds to the provisions of 4.6(3)(a) & (b) above.

6.0 Justification of Proposed Variation

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 11* & *Samadi v Council of the City of Sydney [2014] NSWLEC 1199*.

Paragraph 27 of the judgement states:

Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The site is located in the R1 General Residential Zone. The objectives of the R1 zone are noted as:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

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Comments

It is considered that notwithstanding the extent of the non-compliance with the maximum floor space ratio control (92.3m² or 25.3%), the proposed additions to the existing multi dwelling development will be consistent with the individual Objectives of the R1 General Residential zone for the following reasons:

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

The R1 General Residential Zone contemplates low density residential uses on the land. The housing needs of the community are appropriately provided for in this instance through the proposed additions to the existing multi dwelling development which will provide form an appropriate level of family accommodation and in a form which respect the predominant height and scale of the surrounding dwellings.

The development will see a noncompliance with the floor space ratio of 92.3m² or 25.3%, with the majority of the new floor area within the existing building volume and through the development of the roof space with a new loft level.

Further, the complementary external finishes to the upper level will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

The compatible form and scale of the new works will meet the housing needs of the community within a multi dwelling development which is a permissible use in this General Residential zone.

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

The development continues the multi dwelling use of the current development, which supports the range of housing choice in the locality.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

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Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 4.4 are articulated at Clause 4.4(1):

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

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (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,*
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (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.*

Despite the variation to the maximum floor space ratio, the proposed alterations and additions are considered to be in keeping with the relevant Objectives of Clause 4.4 for the following reasons:

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

The objective of Clause 4.4 (1)(a) seeks to ensure buildings, by virtue of their height and scale are consistent with the desired future streetscape character of the locality.

The surrounding area is predominantly characterised by two – three storey development, often located over basement garages and service rooms.

The development will maintain a compatible scale relationship with the existing residential development in the area. Development within Augusta Road has a wide range of architectural styles and given the variety in the scale of this development, the proposal will be consistent with surrounding development and will not adversely affect the streetscape.

The proposal seeks to accommodate the new floor area largely within the existing building volume and by developing the roof space with a new loft level. The proposed design will by seeking to include the majority of the new floor space within the building will suitably reduce the visual bulk of the dwelling.

The overall building height respects the surrounding character and the design seeks to minimise the sense of bulk and scale by providing for increasing setbacks to the upper floor level.

The proposed external colour and materials palette utilises darker finishes to the upper floor level and is intended to ensure that the building's visual height and scale is further minimised.

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

The proposed new additions to the existing multi dwelling development present a compatible scale and form to the surrounding development and will not obscure any important landscape and townscape features within the General Residential zone.

The site is not within a recreation or environmental protection zone and is well removed from the foreshore area. The site is not within a conservation area or in the vicinity of any heritage items.

The proposal is intended to reflect the predominant scale and form of the surrounding development in August Road and will reflect the existing multi dwelling uses in the vicinity.

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

The site is considered to be sufficient to provide for the proposed works, with the dimensions of the lot to be unchanged.

The proposal will maintain a suitable area of soft landscaping and the site will maintain an appropriate balance between the landscaping and the built form.

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

Due to the general slope of the site towards the north, the properties to the west of the site enjoys views towards the north-east over Manly towards the beach. Views past the site are generally along the rear, northern setback alignment.

The proposal will provide for increasing setbacks to the upper floor level which will allow for suitable views to be maintained through and over the site.

Views from the surrounding public spaces are not adversely affected.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

The site is not within a recreation or environmental protection zone and is well removed from the foreshore area. The site is not within a conservation area or in the vicinity of any heritage items.

The proposal will provide for increasing setbacks to the upper floor level which will allow for suitable views to be maintained through and over the site.

Views from the surrounding public spaces are not adversely affected.

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Suitable erosion control and sedimentation designs, together with stormwater management will be provided to mitigate any environmental impacts to the adjoining lands and the nearby public domain.

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

The site is not located within a business zone and by providing for additions to an existing multi dwelling residential building, is not contrary to the viability of any local business activity.

Despite the variation to the floor space ratio control, we are of the view that the proposal is consistent with the objectives of the development standard.

Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for the construction of alterations and additions to an existing multi dwelling development, which is constrained by the extent of the existing development on site.

In the *Wehbe* judgment (*Wehbe v Pittwater Council* [2007] NSWLEC 827), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded and that approval of the Objection may be consistent with the aims of the policy. These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

Comment: Yes. Refer to comments under 'Justification of Proposed Variation' above which discusses the achievement of the objectives of the standard.

2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

Comment: It is considered that the purpose of the standard is relevant but the purpose is satisfied.

3. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

Comment: Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development.

Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

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4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

Comment: Not applicable.

5. *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Comment: The development standard is applicable to and appropriate to the zone.

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

Precondition 4 - To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

Council's controls in Clause 4.4 provide a maximum floor space ratio of 0.6:1 for the subject development.

The proposal seeks to provide a floor space ratio of 456.14m² or 0.75:1 which presents a variation to the control of 92.3m².

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

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of this year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the floor space ratio and FSR controls.

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While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means:

"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".

Accordingly, when assessed against the relevant Objects of the Environmental Planning & Assessment Act 1979, (NSW) outlined in s1.3, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The proposed additions to the existing multi dwelling development will maintain a bulk and scale which is consistent with that of existing surrounding development in the locality, which promotes the orderly & economic use of the land.
- Similarly, the proposed development will provide for an appropriate level of family accommodation and improved amenity within a built form which is compatible with the streetscape of Augusta Road which also promotes the orderly and economic use of the land.
- The proposal is considered to promote good design and amenity to the local built environment as appropriate views, solar access and privacy will be maintained for the neighbouring properties.

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum floor space ratio.

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7.0 Conclusion


This development proposes a departure from the maximum floor space ratio standard, with the proposed alterations and additions to the existing multi dwelling development to provide a maximum floor space ratio of 0.75:1.

This variation occurs as a result of the siting and extent of the existing development on site.

This objection to the maximum floor space ratio specified in Clause 4.4 of the Manly LEP 2013 adequately demonstrates that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum floor space ratio would be unreasonable and unnecessary in the circumstances of this case.



VAUGHAN MILLIGAN
Town Planner

5.0 PLANNING PROPOSALS

ITEM 5.1	PLANNING PROPOSAL 10-12 BOONDAH RD AND 6 JACKSONS RD, WARRIEWOOD (PEX2019/0003)
REPORTING OFFICER	MANAGER, STRATEGIC AND PLACE PLANNING
TRIM FILE REF	2019/608095
ATTACHMENTS	1 ↓ Submissions

PURPOSE

To report the assessment of a Planning Proposal lodged for 6 Jacksons Road and 10 & 12 Boondah Road, Warriewood (properties located within the area known as the Southern Buffer within the Warriewood Valley Urban Land Release Area) and recommend that the Panel advise Council to reject and not progress the Planning Proposal to a Gateway Determination.

SUMMARY

On 29 August 2019, Northern Beaches Council (Council) received a Planning Proposal (PEX2019/0003) for 6 Jacksons Road and 10 & 12 Boondah Road, Warriewood (the site) that seeks to amend the *Pittwater Local Environmental Plan 2014* (Pittwater LEP 2014) to permit a four (4) storey residential flat building development with a yield of 110 to 130 dwellings and open space purposes including two (2) new sports fields (the 2019 Planning Proposal).

The 2019 Planning Proposal is requesting the following amendments to Pittwater LEP 2014:

- Rezone the site from RU2 Rural Landscape zone to R3 Medium Density Residential zone and RE1 Public Recreation zone;
- Amend the Height of Buildings Map to increase the maximum building height from 8.5m to 15.0m;
- Amend the Lot Size Map to remove the 1 hectare minimum lot size standard; and
- Amend Clause 6.1(3) and the Urban Release Area Map to enable a dwelling yield of 110 to 130 dwellings.

The Applicant, Henroth Investments Pty Limited (Henroth) originally provided as a part of the 2019 Planning Proposal, an offer to enter into a Voluntary Planning Agreement (VPA) with Council to dedicate 6 Jacksons Road to be rezoned as open space to facilitate the provision of a new full-sized sports field and a small sized sports field, with all costs to be offset against any development contributions that would otherwise be levied on the proposed development.

Subsequently, by letter dated 8 November 2019 Henroth provided to Council a revised VPA offer as follows:

- Remove the request that all costs associated with the proposed sports playing fields works be offset against any Section 94 levies that would otherwise be payable to Council;
- Dedication to Council of 6 Jacksons Road and construction of the sports fields;
- In addition to any Section 94 levies otherwise payable the applicant will assist in funding the rehabilitation of Endangered Ecological Communities (EEC's) in the local area including the Narrabeen Creek riparian corridor;
- The applicant has offered to construct (in partnership with Council) a new 130-140 space at grade public car park on the Council's Public Open Space zoned land between the existing Boondah Road sports fields and Pittwater Road and upgrade the existing car parking area at the Heather Nelson Centre.

The Development Contributions Committee considered the amended VPA offer on 27 November 2019 and resolved to not support the amended offer as it has not demonstrated appropriate public benefit.

Council commissioned DFP Planning Pty Limited (DFP) to undertake an independent assessment of the 2019 Planning Proposal in accordance with the NSW Planning and Environment's *Planning Proposal: A Guide to Preparing Planning Proposal* (December 2018).

DFP has concluded that the 2019 Planning Proposal should not be supported by Council on a number of grounds including (but not limited to) potential adverse environmental impacts, flooding, bushfire risks, inconsistency with relevant strategic planning framework, inconsistency with relevant State Government Section 9.1 Directions and insufficient strategic merit and site-specific merit.

DFP recommends that Council not progress the 2019 Planning Proposal to a Gateway Determination.

RECOMMENDATION OF INDEPENDENT PLANNING CONSULTANT (endorsed by the Director Planning and Place)

Part 1

That Council not progress the 2019 Planning Proposal lodged for 6 Jacksons Road and 10 & 12 Boondah Road, Warriewood to Gateway for determination for the following reasons:

- A. It is inconsistent with the relevant Strategic Planning Framework being the *Warriewood Valley Strategic Review Addendum Report* adopted 17 November 2014, amended 19 December 2017 by the Northern Beaches Council and incorporated in Clause 6.1 Warriewood Valley Release Area of the *Pittwater Local Environmental Plan 2014*.
- B. The 2019 Planning Proposal has not demonstrated sufficient Strategic Merit or Site-Specific Merit as required under the NSW Planning, Industry and Environment's *Planning Proposals: A guide for preparing planning proposals* (December 2018).
- C. The 2019 Planning Proposal will exacerbate an existing under supply of open space land in the Warriewood Valley Release Area through both the increased demand arising from the additional unplanned residential population and the loss of a significant area of land that has been identified and planned by Council for Open Space provision in the relevant Local Strategic documents.
- D. The Planning Proposal is inconsistent with the following applicable Ministerial Planning Directions under Section 9.1 of the EP&A Act 1979:
 - i. 1.2 Rural Zones
 - ii. 2.1 Environment Protection Zones
 - iii. 2.3 Heritage Conservation
 - iv. 4.1 Acid Sulfate Soils
 - v. 4.3 Flood Prone Land
 - vi. 4.4 Planning for Bushfire Protection
 - vii. 7.1 Implementation of the Metropolitan Strategy
- E. The proposed 4 storey residential flat building development envisaged by the 2019 Planning Proposal on 10 and 12 Boondah Road is considered to be excessive in building height, scale and density when compared with the local character context of the Warriewood Valley in the vicinity of the site and having the regard to environmental constraints of the site. The proposal is inconsistent with the relevant design principles of *State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development*, particularly in respect to the

proposed 15m maximum building height standard and the proposed yield of 110-130 dwellings.

- F. The proposed construction of active open space (new synthetic surfaced sports fields) on 6 Jacksons Road and the proposed residential flat building development on 10 Boondah Road is unacceptable as it would involve the destruction of areas of remnant Swamp Oak Floodplain Forest, being an Endangered Ecological Community (EEC) of significant biodiversity value.
- G. The proposed residential flat building development on 10 and 12 Boondah Road is unacceptable as it would involve the destruction of an area of remnant Bangalay Sand Forest, being an Endangered Ecology Community (EEC) of significant biodiversity value.
- H. The 2019 Planning Proposal is inconsistent with the following Planning Directions and Priorities of Council's *Towards 2040 Draft Local Strategic Planning Statement* (Draft LSPS):
- Direction – Landscape:
Priority 1 – Healthy and valued coast and waterways
Priority 2 – Protected and enhanced bushland and biodiversity
Priority 5 – Greener urban environments
Priority 6 – High quality open space for recreation
 - Direction – Resilience:
Priority 8 – Greater community resilience to natural hazards and climate change
 - Direction – Infrastructure and Collaboration:
Priority 9 – Infrastructure delivered with employment and housing growth
 - Direction – Housing:
Priority 15 – Housing supply, choice and affordability in the right locations
- I. The "Site-Specific" 2019 Planning Proposal to enable the proposed 4 storey residential flat building development and open space purposes is considered to be pre-emptive and it would create an undesirable precedent in light of Council's *Towards 2040 Draft LSPS* which has recently been on public exhibition and includes the following Actions:
- a) Action 6.5 – Investigate the provision of sports fields in new housing development areas including Warriewood Valley and potentially Ingleside.
 - b) Action 15.1 – Prepare and implement a local housing strategy.
 - c) Action 15.2 – Develop LEP and DCP controls informed by the local housing strategy to ensure the supply and mix of housing responds to community needs.
- J. The 2019 Planning Proposal is considered to be inconsistent with the following Directions and Objectives of the Greater Sydney Region Plan:
- i. Direction for Livability:
 - Objective 7 – Communities are healthy, resilient and socially connected.
 - Objective 13 – Environmental Heritage is identified, conserved and enhanced.
 - ii. Direction for Sustainability:
 - Objective 27 – Biodiversity is protected, urban bushland and remnant vegetation is enhanced.
 - Objective 30 – Urban Tree Canopy cover is increased.
 - Objective 31 – Public Open Space is accessible, protected and enhanced.

- K. The 2019 Planning Proposal is considered to be inconsistent with the following Directions and Planning Priorities of the North District Plan:
- i. Direction for Livability:
 - Planning Priority N3 – Providing Services and social infrastructure to meet people's changing needs.
 - ii. Direction for Sustainability:
 - Planning Priority N16 – Protecting and enhancing bushland and biodiversity.
 - Planning Priority N19 – Increasing urban tree canopy cover and delivering Green Grid connections.
 - Planning Priority N22 – Adapting to the impacts of urban and natural hazards and climate change.
 - Planning Priority N23 – Preparing local strategic planning statements informed by local strategic planning.
- L. The development of sports fields at 6 Jacksons Road as envisaged under the 2019 Planning Proposal is considered to be inconsistent with Clause 6.1(4) of the Pittwater LEP 2014 as it does not provide for the rehabilitation of aquatic and riparian vegetation habitats and ecosystems within the Narrabeen Creek Line Corridor within the full extent of the creek line corridor as shown on the Urban Release Area Map of the LEP.

Part 2

Should Council decide to support the 2019 Planning Proposal for submission to the Department of Planning Industry and Environment for a Gateway Determination, the applicant should be requested to provide the following:

- a) Sufficient information outlining the pre and post development flood regime for a range of magnitude flood events up to and including the Probable Maximum Flood (PMF) event.
- b) The Applicant to confirm the most contemporary flood risk data for the site. This should be through obtaining a comprehensive Flood Information Report from Council.
- c) The Applicant to prepare a Water Management Report meeting the requirements of the Warriewood Valley Water Management Specification 2001 or as amended which requires the following information to be provided at the Planning Proposal stage.
 - i. Concept Stormwater Drainage Plan – Inter-allotment drainage and water quality treatment devices including infiltration rates; and
 - ii. Detention systems – On-site Detention (OSD) for 1% Annual Exceedance Probability (AEP) is required for the portion of the land that this flood affected. However, in these areas OSD is required for more frequently occurring events such as the 5% AEP and the 20% AEP (page 69 Water Management Specification 2001).
- d) The Applicant will only be permitted to fill the site where it can be demonstrated within the Water Management Report that:
 - i. There is no net decrease in the flood plain volume of the flood way or flood storage area within the property for any flood event up to the 1% AEP flood event and the PMF event including climate change considerations for both design events;
 - ii. There is no additional adverse flood impact on the site and surrounding properties and flooding processes for any flood event up to the PMF event including climate change impacts.

- e) The Applicant to demonstrate that the risk to life in all events up to and including in a Probable Maximum Flood event can be safely managed, with evacuation as a preference for flood emergency response.
 - f) An Aboriginal Cultural Heritage Assessment for the 2019 Planning Proposal.
 - g) An Acid Sulfate Soil Assessment for the 2019 Planning Proposal.
 - h) A Land Contamination Assessment report for the 2019 Planning Proposal in accordance with the requirements for Clause 6 of SEPP 55 – Remediation of Land.
 - i) Information demonstrating how the 2019 Planning Proposal complies with the provisions of SEPP (Coastal Management).
 - j) The Applicant is to reconsider the design of the 2019 Planning Proposal with a substantially reduced footprint, which first avoids then minimizes impacts to the known Biodiversity Values of the site as referred to in the Council's internal referral response from Council's Senior Environment Officer, Biodiversity and Planning.
 - k) The Applicant is to provide additional information to demonstrate how the 2019 Planning Proposal will satisfy the matters raised in the NSW Rural Fire Service letter advice in respect to the 2019 Planning Proposal in the consideration of the requirements set out in the new Draft Planning for Bushfire Protection (PBP) which include the following matters:
 - i. The proposed 15 metre setback to the western boundary/Warriewood Wetlands may not be sufficient to comply with the minimum requirements setout in Appendix 1 of the PBP; and
 - ii. Buildings exceeding 3 storeys in height are considered to be multi-storey buildings. Multi-storey buildings are required to comply with the performance criteria within Chapter 5 including the requirement for an Asset Protection Zone (APZ) which meets a threshold of 29kW/m², along with additional considerations setout in Section 8.2.2 of the PBP.
 - l) The Applicant is to reconsider the design of the 2019 Planning Proposal to provide a minimum 25m width vegetated riparian corridor zone either side of the Narrabeen Creek centre line.
 - m) Traffic and Transport matters raised by Council's Officers and the Roads and Maritime Services.
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REPORT

BACKGROUND

Previous Planning Proposal (PP 0007/13)

In late 2013 Henroth lodged a Planning Proposal with the former Pittwater Council for privately owned properties in the Southern Buffer of the Warriewood Valley Urban Release Area being 6 Jacksons Road and 3,6,8,10 and 12 Boondah Road, Warriewood (the 2013 Planning Proposal). The 2013 Planning Proposal was for a large mixed use development comprising retail, commercial and residential land uses.

DFP were commissioned by the Council at that time to undertake an independent assessment of the 2013 Planning Proposal.

On 17 March 2014 the former Pittwater Council resolved not to support the 2013 Planning Proposal for the following reasons:

- "1. That Council note the contents of Dox Fox Planning's Assessment of Planning Proposal PP 0007/13 for 6 Jacksons Road and 3,6,8,10 and 12 Boondah Road, Warriewood;*
- 2. That the Planning Proposal PP 0007/13 not be supported for referral to NSW Planning and Infrastructure for Gateway determination based on the reasons provided by Dox Fox Planning as outlined below:*
 - a. It does not meet the strategic objectives of the Draft North East Subregional Plan, SHOROC Employment Lands Study, Pittwater Local Planning Strategy and Warriewood Valley Strategic Review Report 2012 through the expansion of Warriewood Square shopping centre to provide a new town centre;*
 - b. It will result in unacceptable adverse outcomes for public open space and recreation areas within the Southern Buffer;*
 - c. It is inconsistent with Section 117 Direction 4.3 Flood Prone Land;*
 - d. The approach to managing flooding constraints to justify an urban zone on flood prone land is not supported;*
 - e. It fails to retain and protect high value biodiversity land (including EECs) and provides insufficient justification for their removal or consideration of ecological recommendations;*
 - f. It is unable to achieve connectivity between the Site and adjoining commercial areas (including relocated Boondah Road and Vuko Place connection) on the basis of unacceptable ecological and traffic impacts;*
 - g. It does not address potential negative economic impacts upon surrounding retail centres, or address the potential oversupply of commercial floor space;*
 - h. The urban design outcomes of the Masterplan are not supported; and*
 - i. It does not adequately represent the interests of all affected land owners.*
- 3. That any future Planning Proposal for land within the Southern Buffer should incorporate all of the land within the Southern Buffer and also incorporate the Warriewood Square shopping centre site.*
- 4. That based on the outcomes of the assessment of the Planning Proposal, the recommendations of Dox Fox Planning be considered in the future update to the Pittwater Local Planning Strategy and the Future Review of the Warriewood Valley Planning Framework 2010."*

Henroth subsequently requested a Pre-Gateway Review of the 2013 Planning Proposal from the Department of Planning and Environment (the Department) and the matter was referred to the Joint Regional Planning Panel (JRPP).

On 17 February 2015, the JRPP provided its advice and justification to the Minister for Planning in respect to the 2013 Planning Proposal and recommended:

- "1. The Panel has considered the Department of Planning and Environment's briefing note, as well as the views of the Council and of the proponent. The reasons for the Panel's decision not to recommend that the proposal proceed to Gateway Determination are as follows:*
 - a. The Panel acknowledges that the Warriewood Valley Strategic Review Report 2013 suggests that individual landowners in the Southern Buffer may pursue their own planning proposals. However, the proposal is inconsistent with the Warriewood Valley Strategic Review Addendum Report 2014. This is a recent report prepared by the Council and based on community input. The general intention of the Addendum Report for most of this land is to be used for recreation.*
 - b. The scale of the residential component of the proposal is twice that of nearby development and would be out of context with any other development in the Warriewood Valley.*
 - c. The site is flood-prone land. The proposal is inconsistent with s117 Direction 4.3 in that it may have impact on other properties. The Panel notes that the proponent acknowledges that, should the proposal proceed to Gateway, further work on flooding would be required. If this were the only problematic aspect of the proposal, the Panel would merely defer consideration pending completion of further flooding studies.*
 - d. The Panel notes that there are Endangered Ecological Communities on the land. While the proponent suggests that these communities could be replanted/relocated elsewhere, there is no firm proposal, approved by the landowner of the land, for such compensatory relocation or replanting.*
 - e. The future population of Warriewood Valley requires additional Open Space. The majority of the site (excluding 6 Jackson Road) has been identified for future active open space in the draft Warriewood Valley Section 94 Contribution Plan. The Panel notes that the population foreseen by this proposal (about 1,000 persons) alone generates a need for about 2.8 ha of Open Space.*
 - f. The amount of retail area proposed is excessive. The proposed connection to the existing Warriewood Centre is unsatisfactory. The impact on the expanded Warriewood Centre of 18%, suggested by the applicant, is significant. The impact on Mona Vale Centre has not been calculated."*

Previous Planning Proposal (PP 0005/16)

In December 2016, Henroth lodged with Northern Beaches Council (Council) a Planning Proposal in respect to 6 Jacksons Road and 10 and 12 Boondah Road, Warriewood (the 2016 Planning Proposal). The 2016 Planning Proposal sought an amendment to the Pittwater LEP 2014 to permit a 3-4 storey residential flat building with a yield of 25-30 dwellings and a 2 storey bulky goods retail centre of 16,000 – 17,000 gross floor area (GFA). The Masterplan for the 2016 Planning Proposal included a boardwalk link to the Warriewood Wetlands and a possible future plaza.

A report on the 2016 Planning Proposal was considered at the Ordinary Council Meeting on 28 March 2017 at which Council resolved not to progress the 2016 Planning Proposal for the site to Gateway Determination for the following reasons:

- a. *"It is inconsistent with the relevant strategy study being the Warriewood Valley Strategic Review Addendum Report (2014), adopted by the former Pittwater Council 17 November 2014 and subsequently incorporated into the Pittwater Local Environmental Plan 2014.*
- b. *Strategic merit or site-specific merit in line with the NSW Planning and Environment's Planning Proposals: A guide to preparing planning proposals (2016) has not been demonstrated.*
- c. *It is inconsistent with Local Planning Directions:*
 - i. *1.2 Rural Zones*
 - ii. *2.1 Environment Protection Zones*
 - iii. *4.1 Acid Sulphate Soils*
 - iv. *4.3 Flood Prone Land*
 - v. *4.4 Planning For Bushfire Protection*
 - vi. *7.1 Implementation of the Metropolitan Strategy*
- d. *The proposed off-site flood storage solution on an area proposed to be zoned for public recreation is unacceptable to Council as any proposed development should provide this capacity on private land.*
- e. *The proposed development envisaged by the Planning Proposal is considered excessive in in bulk and scale and out of character with the locality, delivers poor urban design outcomes and would result in inadequate landscaping and setbacks.*
- f. *The information submitted to support the Planning Proposal is substantially deficient in the following areas to allow for an informed assessment of the Planning Proposal:*
 - a. *Traffic matters raised by Council officers and the Roads & Maritime Services.*
 - b. *A flood emergency response strategy.*
 - c. *An Aboriginal cultural heritage assessment.*
 - d. *An Acid Sulphate Soil assessment.*
 - e. *An assessment of flow and water management at the site and its potential impact on the groundwater dependent ecosystem (Warriewood Wetlands).*
 - f. *Information demonstrating how soil stability, erosion, sediment, landslip assessment, and subsidence can be managed.*
 - g. *Information demonstrating how the desired development outcomes and building footprints can be achieved while complying with Council's Warriewood Valley Urban Release Area Water Management Specifications (2001).*
 - h. *Information documenting how the increases in hazards due to sea level rise (climate change) is accounted for.*
 - i. *Information demonstrating compliance with Local Planning Direction 4.3 Flood Prone Land.*
 - j. *Information to determine whether the finished floor levels for both the residential and retail developments are at or above the Flood Planning Level with Climate change (4.28m AHD).*
 - k. *Information demonstrating compliance with the draft Coastal Management SEPP.*
 - l. *Information assessing the appropriateness of future permissible development as Special Fire Protection Purpose developments, as listed in Section 100B (6) of the Rural Fires Act 1997 in the proposed B2 zone.*

- m. *A Land Contamination Report in order to consider whether the land is contaminated and, if so, whether Council is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used."*

On 22 March 2017 the proponent submitted a request for a Rezoning Review to the Department in respect to the 2016 Planning Proposal.

On 31 May 2017 the Sydney North Planning Panel (Panel) considered the Department's Briefing Note as well as the views of Council and the proponent. The Panel's Rezoning Review Record of Decision in respect to the 2016 Planning Proposal states as follows:

"The reasons for the Panel's decision not to recommend that the proposal proceed to Gateway Determination are as follows:

1. *The Panel notes that the proposal is smaller in scale and of different proposed uses to those previously assessed by the Joint Regional Planning Panel in February 2015. However, a number of the reasons noted for recommending refusal at that time remain.*
2. *The site is flood-prone land. The proposal is inconsistent with s117 Direction 4.3.*
3. *State Emergency Services has noted that the proposed 'sheltering in place' and evacuation strategy is unacceptable.*
4. *The Panel notes that the Roads Maritime Services has advised that the Traffic Study submitted does not adequately analyse cumulative traffic impacts and an addendum traffic study is required prior to any Gateway Determination.*
5. *The Panel is of the view that the potential traffic impacts of accessing and egressing a bulky goods facility from a collector road serving a residential area is unacceptable.*
6. *Council's planning strategies, including the Pittwater Open Space Study, the Addendum Report to the Strategic Review, and the Warriewood Valley Section 94 Contribution Plan, have identified the majority of the site for future active open space. The Panel notes that the proposal suggests a cap on the amount of residential development and that active open space could be provided elsewhere, however there is no firm proposal to address the need.*
7. *The proponent submits that the proposal has strategic merit in relation to meeting the draft District Plan's goal of accommodating growth in local centres. However, the Panel is of the view that a major bulky goods outlet is inconsistent with the nature and scale of a local neighbourhood centre and that the proposed bulky goods facility is separate to the existing local centre. Further, the Panel is not of the view that some of the Sustainability provisions of the draft District Plan have been satisfied, particularly in relation to water quality and transport.*
8. *The Panel does not agree that the provision of a public walkway and plaza to view the Wetlands is of itself sufficient merit to justify the proposal."*

On 31 August 2017 Henroth filed Class 4 Proceedings (*Henroth Investments Pty Limited v Sydney North Planning Panel (2018) NSW LEC 112*) seeking a Judicial Review challenging the decision of the Panel in relation to the Rezoning Review made on 31 May 2017 recommending that the 2016 Planning Proposal should not proceed to a Gateway Determination.

On 31 July 2018 His Honour, Justice Pain of the NSW Land and Environment Court issued Court Orders in respect to the subject Court Proceedings dismissing the Applicant's Amended Summons dated 16 March 2018.

Henroth subsequently filed an Appeal with the NSW Court of Appeal Supreme Court (*Henroth Investments Pty Limited v Sydney North Planning Panel (2019) NSW CA68*) with a decision of the NSW Court of Appeal being issued on 12 April 2019 dismissing the subject Appeal by Henroth challenging the Panel's Rezoning Review determination of the 2016 Planning Proposal.

Current Planning Proposal (PEX 2019/0003)

On 29 August 2019 Henroth submitted the current 2019 Planning Proposal (PEX 2019/0003) with Council for 6 Jacksons Road and 10 and 12 Boondah Road, Warriewood seeking an amendment to the Pittwater LEP 2014 (the 2019 Planning Proposal). The 2019 Planning Proposal seeks the rezoning of the site from RU2 - Rural Landscape zone to R3 – Medium Density Residential zone and RE1 – Public Recreation zone under an amendment to the Pittwater LEP 2014 to permit a four (4) storey residential flat building development on 10 and 12 Boondah Road (with a 15.0 metre maximum building height limit and a dwelling yield of 110 to 130 dwellings) and open space purposes (including two (2) new synthetic surfaced sports fields) on 6 Jacksons Road, Warriewood including reconstruction of the existing Boondah Road sports fields.

The following supporting documents were submitted by Henroth with the original 2019 Planning Proposal:

- Planning Proposal Report prepared by SJB Planning dated August 2019;
- Henroth letter dated 27 August 2019 providing an offer to Council to enter into a Voluntary Planning Agreement (VPA) *"to deliver the new playing fields with all costs to be offset against any development contributions that would otherwise be levied on our proposed development"*;
- Urban Design Analysis and Concept Master Plans prepared by Buchans Architects dated 23 August 2019;
- Biodiversity Constraints Assessment report prepared by Travers Bushfire and Ecology dated August 2019;
- Bushfire Protection Assessment report prepared by Travers Bushfire and Ecology dated August 2019;
- Flood Planning Assessment report prepared by Calibre Engineers dated 26 August 2019;
- Transport Impact Assessment report prepared by Ason Group dated 21 August 2019;
- Ground Water Measurements Memorandum prepared by Douglas Partners dated 16 August 2019;
- Preliminary Geotechnical Assessment report prepared by Douglas Partners dated 15 December 2016; and
- Memorandum response to comments (acid sulfate soils and water quality impacts) prepared by Douglas Partners dated 2 May 2017.

Revised VPA Offer

By letter dated 8 November 2019 Henroth submitted to Council a revised VPA offer as follows:

- Remove the request that all costs associated with the proposed playing fields works be offset against any Section 94 levies that would otherwise be payable to Council;
- Dedication to Council of 6 Jacksons Road and construction of the sports fields;
- In addition to any Section 94 levies otherwise payable the applicant will assist in funding the rehabilitation of Endangered Ecological Communities (EEC's) in the local area including the Narrabeen Creek riparian corridor;

- The applicant has offered to construct (in partnership with Council) a new 130-140 space at grade public car park on the Council Public Open Space zoned land between the Boondah Road sports fields and Pittwater Road and upgrade the existing car parking area at the Heather Nelson Centre.

The revised VPA by Henroth to Council included the following supporting documents:

- Henroth letter dated 8 November 2019 providing the revised VPA offer to Council;
- Concept Plans for the proposed Boondah Reserve car parking area prepared by Buchans Architects dated 8 November 2019;
- SJB Planning letter dated 8 November 2019 providing an assessment of the 2019 Planning Proposal under the Towards 2040 Draft LSPS;
- Ason Group letter dated 8 November 2019 providing an assessment for the revised VPA offer for the new public car park;
- Travers Bushfire and Ecology letter dated 8 November 2019 providing a response on ecological matters for the revised VPA offer.

The Development Contributions Committee considered the amended VPA offer at an extraordinary meeting on 27 November 2019. At this meeting the Committee resolved:

That the Development Contributions Committee:

1. *Do not support the amended offer to enter into a VPA as it has not demonstrated appropriate public benefit for the following reasons:*
 - A. *The proposal will result in a net loss of open space.*
 - B. *The adverse ecological impacts are unlikely to be offset within the local government area.*
 - C. *The provision of additional commuter parking spaces has already been planned within the existing commuter car park and will be delivered by TfNSW when required.*

Council Pre-Lodgement Meeting

DFP has been informed by Council's Planning Officers that Henroth did not request a Planning Proposal Pre-Lodgement Meeting prior to submitting the 2019 Planning Proposal (PEX 2019/0003) to Council on 29 August 2019.

SITE CONTEXT

The site is located within the Southern Buffer of the Warriewood Valley Urban Land Release Area in the Northern Beaches LGA. **Figure 1** below shows the Site Location – Aerial Photograph.



Figure 1 – Site Location – Aerial Photograph

The site comprises three (3) allotments of land with the real property description and owners being:

Address	Property Description	Owners
10 Boondah Road	Lot 4, DP 26902	Henry Fraser Pty Ltd
12 Boondah Road	Lot 3, DP 26902	Cassius Investments Pty Ltd
6 Jacksons Road	Lot 9, DP 806132	Henlen Pty Ltd

The site overall is an irregular shape with a total site area of approximately 35,582m².

Historically 10 and 12 Boondah Road has been used for intensive agricultural purposes but is now partly used for rural and storage purposes. 6 Jacksons Road is largely undeveloped remnant vegetation and riparian creek line with informal paths adjacent to the existing sports fields and Warriewood Square Shopping Centre.

The topography of the site is generally flat and low lying land including a section of the Narrabeen Creek Riparian Corridor.

The three lots comprising the site all contain significant biodiversity and wildlife connectivity value, including Threatened Ecological Communities (TEC) and Threatened Species and their habitats. In particular, the site contains two Endangered Ecological Communities (EEC), being Bangalay Sand Forest an EEC within *NSW Biodiversity Conservation Act 2016* (NSWBC Act) located on 12 Boondah Road and Swamp Oak Floodplain Forest an EEC within NSWBC Act and Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) located on 6 Jackson Road and 10 Boondah Road.

The site is classified as flood-prone land during the 1% AEP (100 year) and the PMF flood events.

The site is classified as Vegetation Category 1 and Vegetation Buffer as shown on Council's Bushfire Prone Land Map.

6 Jackson Road adjoins the existing Boondah Road sports fields and community centre fronting Jacksons Road and Boondah Road to the east. Warriewood Square Shopping Centre directly adjoins 6 Jackson Road to the west.

10 and 12 Boondah Road adjoin a recently constructed three (3) storey residential flat building development to the north along Boondah Road. Adjoining 10 and 12 Boondah Road to the south east are two rural/residential properties. Opposite to 10 and 12 Boondah Road to the north east is the Council's Works Depot, Sydney Water Sewage Treatment Plant and a rural/residential property at 3 Boondah Road which was acquired by Council on 15 December 2017 for public open space purposes. To the south west of 10 and 12 Boondah Road is the Warriewood Wetlands (see **Figure 1**).

The current zoning of the site is RU2 Rural Landscape zone under the provisions of Pittwater LEP 2014.

A minimum lot size standard of 1 hectare applies to the site under Clause 4.2 of Pittwater LEP 2014.

An 8.5 metre maximum building height standard applies to the site under Clause 4.3 of Pittwater LEP 2014.

The site is located in an area designated as Class 3 Acid Sulfate Soils under Clause 7.1 of Pittwater LEP 2014.

The site is identified as being within the Southern Buffer Area with part of 6 Jackson Road being identified as Creek Line Corridor as shown on the Urban Release Area Map of the Pittwater LEP 2014. The Southern Buffer Area which includes the site is not identified under the Table in Clause 6.1(3) of the Pittwater LEP 2014 as permitting a total number of dwellings on any of the allotments as part of (3) the Warriewood Valley Urban Land Release Area. Furthermore, Clause 6.1 of the Pittwater LEP 2014 specifies the following objectives for the development of land in the Warriewood Valley Release Area:

- “(a) to permit development in the Warriewood Valley Release Area in accordance with the Warriewood Valley Strategic Review Report and the Warriewood Valley Strategic Review Addendum Report;*
- (b) to ensure that the development in that area does not adversely impact on waterways and creek line corridors, protects existing native riparian vegetation and rehabilitates the creek line corridors.”*

The Warriewood Valley Strategic Review Addendum Report (December 2017) identifies 10 and 12 Boondah Road as land for 'Recreation' (i.e public open space purposes) and 6 Jacksons Road as land having 'No development potential'.

ASSESSMENT OF PLANNING PROPOSAL

The assessment of the 2019 Planning Proposal has been undertaken by DFP in accordance with the NSW Planning and Environment's *Planning Proposals: A Guide to preparing Planning Proposals* (December 2018).

Part 1 – Objectives or Intended Outcomes

To amend the Pittwater LEP 2014 to facilitates urban development involving the construction of a four (4) storey residential flat building development comprising five (5) apartment buildings with a total yield of between 110 to 130 dwellings, a part basement level and part above ground level car

parking facility, a single two way driveway ramp access to Boondah Road, site landscaping and ancillary works to be located on 10 and 12 Boondah Road.

The 2019 Planning Proposal and the revised VPA offer also includes the construction of active open space (i.e two (2) synthetic surfaced sports fields) and passive open space areas to be located on 6 Jacksons Road, Warriewood in association with reconstruction of the Boondah Road existing sports fields and construction of a new 130-140 space at grade car park on the Council Public open space land on the eastern side of Boondah Road and Pittwater Road and upgrading of the existing car parking area at the Heather Nelson Centre; and funding towards the rehabilitation of EEC's in the local area including the Narrabeen Creek riparian corridor .

Figure 2 below is an extract of the 2019 Planning Proposal Concept Master Plan – Site Context prepared by Buchan Architects for the site.

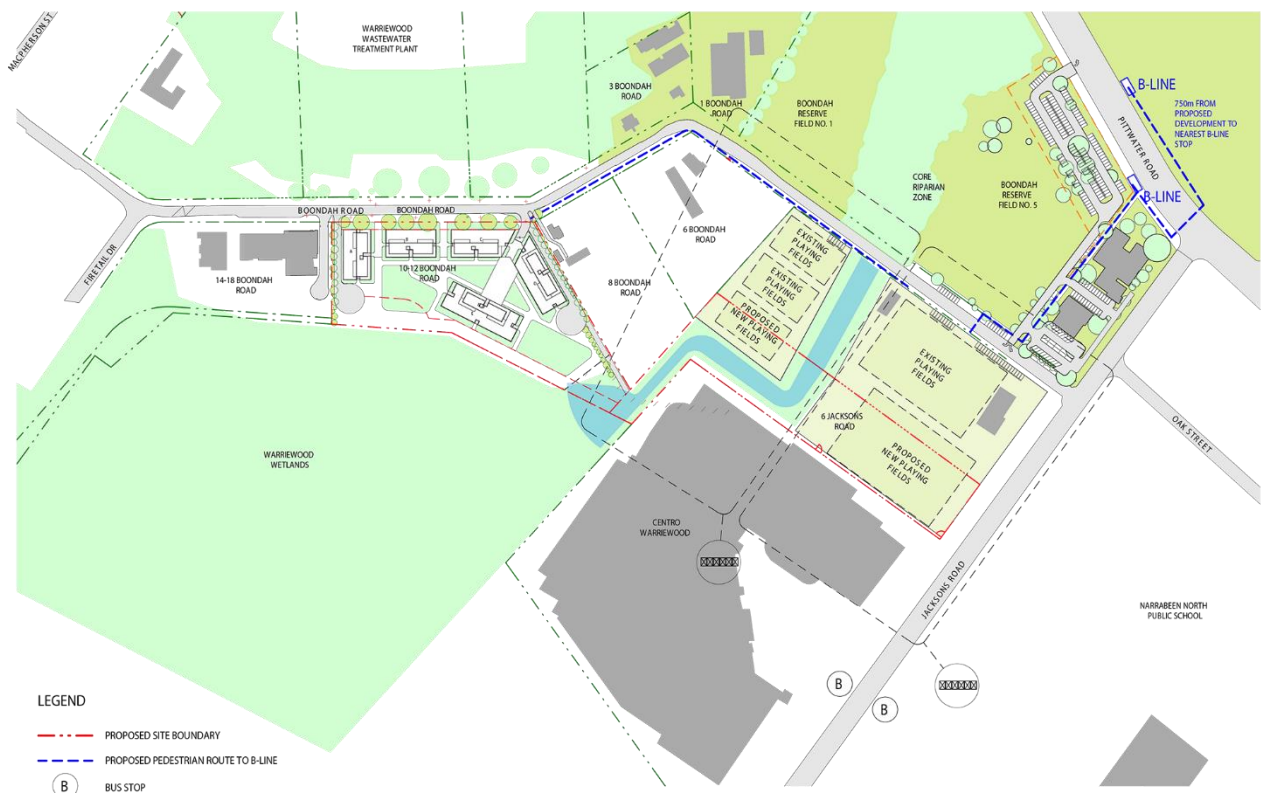
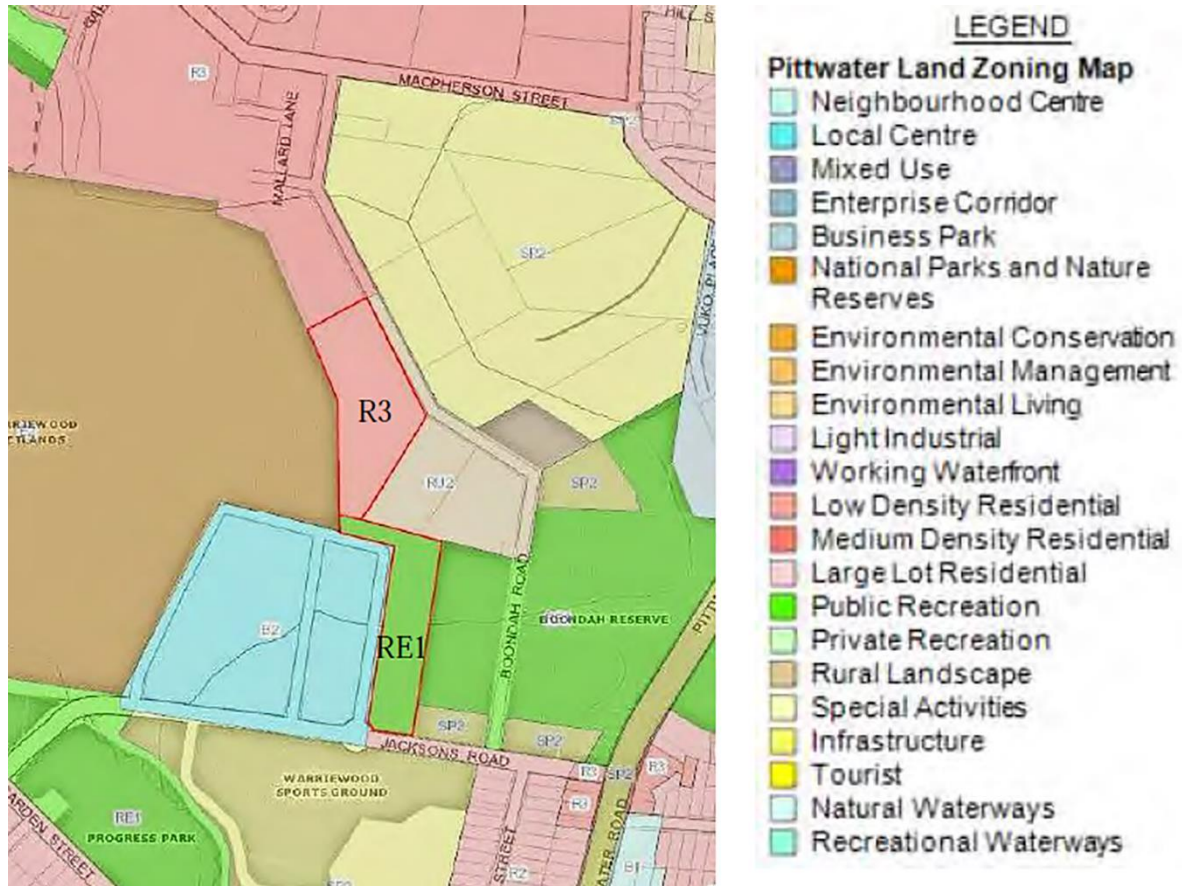


Figure 2 – Master Plan Context

Part 2 – Explanation of Provisions

The 2019 Planning Proposal seeks to:

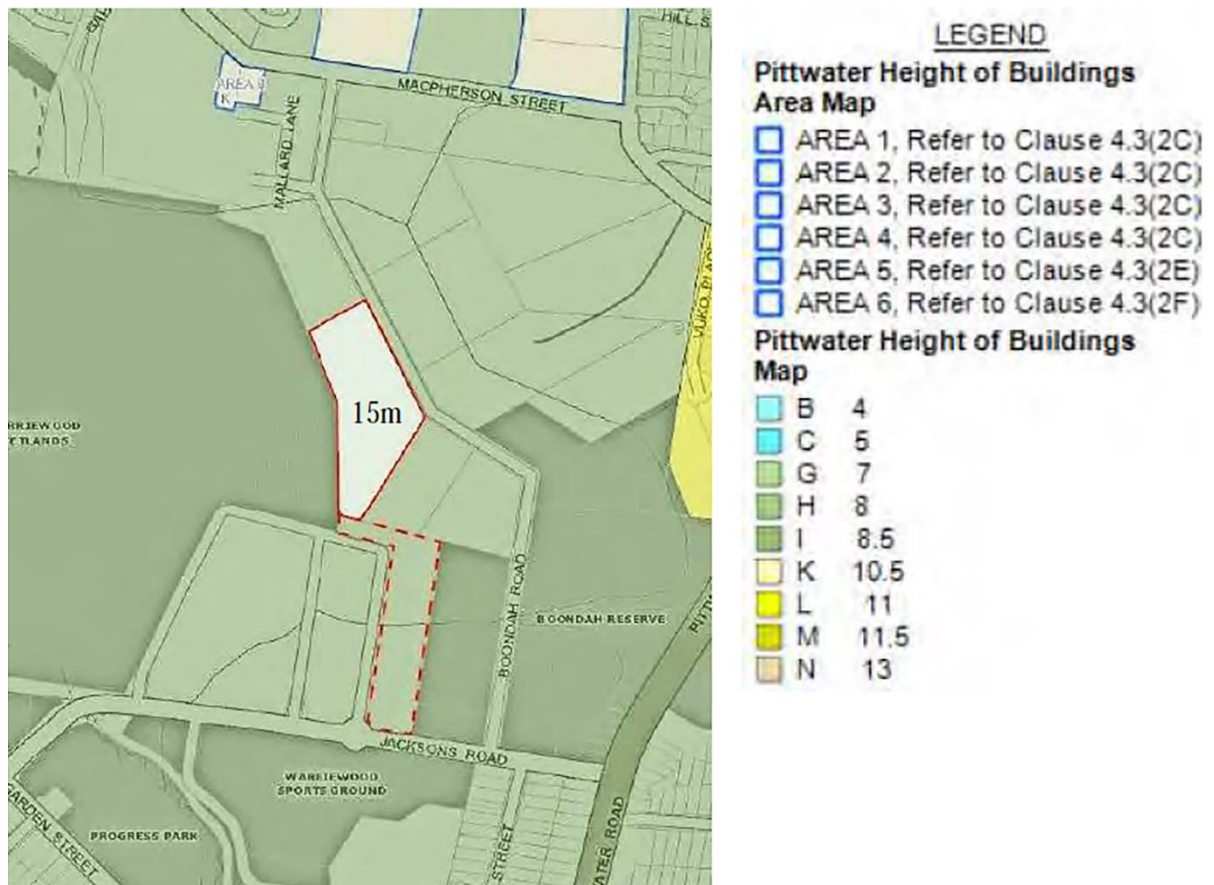
- Amend the Land Zoning Map to show the site as R3 - Medium Density Residential zone and RE1 – Public Recreation zone (see **Figure 3** Land Zoning Map below);



PROPOSED LAND ZONING R3(MEDIUM DENSITY RESIDENTIAL & RE1(PUBLIC RECREATION)

Figure 3 – Proposed Land Zoning Map

- Amend the Height of Buildings Map to impose a Maximum Building Height of 15.0 metres over part of the site being 10 and 12 Boondah Road (see **Figure 4** Height of Buildings Map below);



PROPOSED HEIGHT LIMIT 15m

Figure 4 – Proposed Height of Buildings Map

- Amend the table in Clause 6.1(3) to show the potential of part of the site as a Sector within the Warriewood Valley Urban Release Area with a yield of 110 to 130 dwellings (which equates to approx. 60 dwellings per hectare) for the proposed R3 zoned part of the site being 10 and 12 Boondah Road; and
- Delete the site from the Minimum Lot Size Map (i.e 1 hectare minimum lot size standard).

DFP Response

1. Proposed Zonings under Pittwater LEP 2014

Should Council resolve to support the 2019 Planning Proposal, then the proposed R3 Medium Density Residential zone for 10 and 12 Boondah Road and RE1 Public Recreation zone for 6 Jackson Road, Warriewood are considered to be appropriate to accommodate the future land uses envisaged by the 2019 Planning Proposal.

However, for the reasons outlined in this Assessment Report, DFP considers that the 2019 Planning Proposal should not be supported by Council on a number of grounds.

2. Proposed 15 metre Maximum Building Height Standard Under Pittwater LEP 2014

Notwithstanding that DFP considers the 2019 Planning Proposal should not be supported by Council, it is also considered by DFP that a 15.0 metre maximum building height standard which is intended to permit a four (4) storey residential flat building development on 10 and 12 Boondah Road would be inappropriate having regard to the building height, scale and density when

compared to the local character context of the Warriewood Valley and having regard to the environmental constraints of the site particularly bushfire and flooding risks and potential impacts on significant vegetation including two (2) EEC's within the site and edge effects on the adjoining Warriewood Wetlands.

Accordingly, the 2019 Planning Proposal is considered to be inconsistent with the design quality principles under *SEPP 65 – Design Quality of Residential Apartment Development* particularly the following:

- Principle 1: Context and Neighbourhood Character;
- Principle 2: Built Form and Scale;
- Principle 3: Density.

The existing and emerging residential neighbourhood character and predominant built form and scale of the Warriewood Valley Urban Release Area is a diverse mix of one (1), two (2) and three (3) storey low density housing, seniors housing, townhouses and apartment buildings. The Meriton residential flat development in Macpherson Street and Gahnia Road comprises three (3) and four (4) storey apartment style buildings.

Should Council decide to support the 2019 Planning Proposal it should request Henroth to submit a revised Concept Master Plan for the site with the proposed residential flat buildings on 10 and 12 Boondah Road being limited to a maximum building height of three (3) storeys which would be consistent with the recently constructed residential flat building development adjoining the site to the north at 16-18 Boondah Road.

3. Proposed Density under Pittwater LEP 2014

For the reasons outlined above, DFP does not agree with Henroth's request for a yield of 110 to 130 dwellings under Clause 6.1 of the Pittwater LEP 2014. Should Council decide to support the 2019 Planning Proposal, it should request the proponent to provide a revised Concept Master Plan for a proposed three (3) storey maximum residential flat building development on 10 and 12 Boondah Road in order to determine the appropriate dwelling density yield for the site.

However, as previously noted, DFP is not recommending that Council support the 2019 Planning Proposal on several grounds.

4. Proposed Zoning of 6 Jackson Road to RE1 Public Recreation Zone under Pittwater LEP 2014

DFP does not support the 2019 Planning Proposal in respect to the rezoning of 6 Jacksons Road to RE1 Public Recreation zone and the proposed development of most of the allotment as synthetic surfaced sports fields as this is considered to be inconsistent with the existing site constraints and environmental attributes of this allotment. 6 Jackson Road contains Swamp Oak Floodplain Forest, an EEC within the NSWBC Act 2016 and Commonwealth EPBC Act 1999 and a section of the Narrabeen Creek Line Corridor as shown on the Warriewood Valley Urban Release Area Map of the Pittwater LEP 2014.

6 Jackson Road is a highly constrained allotment being bushfire prone land, flood affected and with significant biodiversity values. Due to these environmental attributes and site constraints, the *Warriewood Valley Strategic Review Addendum Report* (December 2017) recommended that 6 Jackson Road should have a land use designation of "No Development Potential". 6 Jackson Road is not considered suitable for active open space (synthetic surfaced sports fields) given its existing site and environmental constraints. The proposed use of this allotment in conjunction with the existing Boondah Road sports fields and which will require substantial cut a fill earthworks including within the Narrabeen Creek Line Corridor is considered to be questionable in respect to the suitability of the land for such active recreation purposes.

Part 3 – Justification

Section A – Need for the Planning Proposal

1. Is the Planning Proposal a result of an endorsed Local Strategic Planning Statement, Strategic Study or Report?

The 2019 Planning Proposal report prepared by SJB Planning (August 2019) contends that the site has been part of the broader Warriewood Valley Land Release since its inception and that the following strategic studies or reports are of relevance:

- a) The *Warriewood Valley Planning Framework 2010*;
- b) The *Warriewood Valley Strategic Review*; and
- c) The *Warriewood Valley Strategic Review Addendums* – 17 November 2014 and 19 December 2017.

1.1 Warriewood Valley Planning Framework 2010

The 2019 Planning Proposal report states:

“The land subject of this Planning Request is located within Sectors 15 and B under the Planning Framework (refer to Figure 6 overleaf).

Under the Planning Framework, Sectors 15 and B are identified as potential employment generating land. The framework also identifies that the land is subject to potential flooding and sea level rise due to climate change.

The objective of the framework is to provide a basis against which to assess and consider the preparation of detailed Planning Proposals to pursue urban development of land in the release area.”

DFP Response

DFP agrees with the above comments in respect to the Warriewood Valley Planning Framework (WPF) 2010. However, the WPF has been superseded by more recent local strategic studies and reports which recommend a forward path for certain Sectors of land within the Warriewood Valley Release Area, including the Southern Buffer.

1.2 Warriewood Valley Strategic Review

The 2019 Planning Proposal report states:

“The Department of Planning & Environment (DP&E) and the former Pittwater Council completed and endorsed the Warriewood Valley Strategic Review into the planning framework within Warriewood Valley. The review sought to explore opportunities for increased development potential within undeveloped sectors of the release area. The review examined dwelling densities, height controls, transport network capacity and infrastructure capacity, and demands within the valley and surrounding areas.

The review identified that residential development may be possible in the northern areas of the southern buffer, which comprises the sites known as 10 and 12 Boondah Road.

The development capability mapping identified 10-12 Boondah Road as having “more” development potential, having few constraints to urban development.

The further analysis including flooding and climate change identified 12 Boondah Road as being category B and D for urban development, with the balance of the land as category F.”

DFP Response

DFP agrees with the above comments in respect to the Warriewood Valley Strategic Review but also notes that 6 Jacksons Road is wholly classified as category F having limited development potential for urban purposes. The Warriewood Valley Strategic Review (WVSR) has been superseded by the Warriewood Valley Strategic Review Addendum (see below comments).

1.3 Warriewood Valley Strategic Review Addendum (November 2014)

The 2019 Planning Proposal report states:

"The capability mapping for the November 2014 Addendum identified 10-12 Boondah Road as including land of "more" development capability to moderate and less capability.

Council identified that 4.6ha of open space should be secured from 3, 6, 8, 10, and 12 Boondah Road. Accordingly, a land use designation of recreation was applied to the subject land. Council has acquired 3 Boondah Road. Taking into account this acquisition and the proposal to dedicated [sic] approximately 1.2ha of open space, approximately 2ha of additional open space would be secured. The utility and level of service of the open space is increased through the proposed embellishment of the field as a synthetic surface which significantly increases the use capacity of this facility."

DFP Response

DFP disagrees with the above comments and considers that the 2019 Planning Proposal is inconsistent with the findings and recommendations of the *Warriewood Valley Strategic Review Addendum report* (November 2014).

The *Warriewood Valley Strategic Review Addendum report* (November 2014) recommends that 10 and 12 Boondah Road, should have a "Recreation" land use designation (i.e public open space purposes) and 6 Jacksons Road should have a land use designation of "No development potential" as the land has significant environmental values and site constraints. DFP does not consider that 6 Jacksons Road is suitable for the provision of active open space in the form of synthetic surfaced sports fields due to the site constraints and environmental attributes of this land including an area of Endangered Ecological Community (EEC) being Swamp Oak Floodplain Forest.

1.4 Warriewood Valley Strategic Review Addendum (December 2017)

The 2019 Planning Proposal report states:

"The December 2017 Addendum maintained the capability for development classification for the subject land as being a range between "more" and "less" development capability.

The recreation land use designation was maintained."

DFP Response

DFP considers the 2019 Planning Proposal is inconsistent with the *Warriewood Valley Strategic Review Addendum* (December 2017) as the recommended land use designation for 10 and 12 Boondah Road is "Recreation" (i.e public open space purposes) and for 6 Jacksons Road is "No Development Potential".

In particular, the Warriewood Valley Strategic Review Addendum report (December 2017) states:

"The properties 3, 6, 8, 10 and 12 Boondah Road are recommended to have a "Recreation" land use designation for the following reasons:

- The planning for the Release Area was premised on infrastructure and services being provided for the incoming residents delivered as development occurs in the Release Area and that the broader Pittwater community will not fund the additional infrastructure and services required by the Release Area development.*
- Council in considering the 2012 Strategic Review report identified that, as a result of increased development, additional active open space lands of approximately 4.6*

hectares are still to be purchased for recreational uses. In adopting the 2012 Strategic Review, Council agreed to review among other documents, the Warriewood Valley Section 94 Contributions Plan to respond to the new development outcomes envisaged by that report.

- Council's recently completed review of the Pittwater Public Space and Recreation Strategy reaffirmed the philosophy articulated in the Planning of the Release Area. It documented that release areas (Warriewood Valley and Ingleside) identify and purchase recreation areas to meet the demands of incoming populations. The Strategy recommends that:

"The ratio of 2.83 hectares per thousand population has been applied to determine the provision of open space in the Warriewood Valley Land Release area. With an estimated incoming population of 6,777 people, this equates to 19.1 hectares. Purchases to date include:

- 6.1 hectares of active open space;
- 3.99 hectares of passive open space; and
- 3.12 hectares of linear open space (30% of creek line corridors).

It is intended that the remaining balance of 6.32 hectares comprises of 1.69 hectares of linear open space and 4.63 hectares of active open space. The 2.83 hectares per thousand population is an industry standard and it is reasonable that Council determine the best possible mix of landscape settings to ensure the open space network meets the needs of the incoming population. The active open space component, by definition of its use, will consist of larger areas of flat land suitable for active recreation."

- The assessment of the Planning Proposal for the privately owned land within the sector in recognition of the sector's severe flood affectation, topography, proximity to existing recreational land as well as the current shortage of open space in Warriewood Valley, did not support a mixed use development on these lands. The Assessment insofar as it related to suitability of this land for another purpose, concluded:

"The flood prone land within the Southern Buffer may be suitable for public open space and recreation purposes as it is subject to inundation, it adjoins existing public reserves (thus allowing sharing of infrastructure) and has access to valuable bore water irrigation. The topography of alternative areas within Pittwater LGA presents cost, infrastructure and maintenance issues.

Availability of public open space and recreation land areas across Pittwater LGA is limited by a number of factors. The Planning Proposal would result in the removal of strategically significant land from a precinct which presently suffers from an under supply of public open space and recreation land particularly for sports fields and will be subject to a future increase in demand for these areas."

- Based on total development, approximately 4.6 hectares is required for sports fields (land quantum comprises playing surface, run out areas, curtilage for associated infrastructure and buffer zone to adjoining development.)
- The properties 3, 6, 8, 10 and 12 Boondah Road adjoin each other and have an aggregated site area of approximately 4.71 hectares.

6 Jacksons Road contains remnant Coastal Saltmarsh, being an Endangered Ecological Community, and a section of Narrabeen Creek. It is also bushfire prone land and is highly constrained by flooding and biodiversity (foreshore vegetation). Due to these constraints this property is recommended to have a land use designation of 'No development potential'. (see pages 50 to 52)

Furthermore, the 2019 Planning Proposal seeks the rezoning of 10 and 12 Boondah Road to an R3 - Medium Density Residential zone to permit a four (4) storey residential flat buildings development with a total yield of 110 to 130 dwellings. Adopting the 2.83 hectares/per 1,000 population open space standard that has been applied to the Warriewood Valley Release Area, the proposed residential flat building development at 10 and 12 Boondah Road would create an additional need for approximately 0.84 to 0.99 hectares of active and passive open space in the Warriewood Valley to cater for the unplanned increased demand of the new additional residential population.

It is noted that the *Warriewood Valley Strategic Review Addendum Report* was adopted by Northern Beaches Council on 19 December 2017 and took effect on 13 January 2018 (the Addendum Report). This is the current Addendum Report which applies to the Warriewood Valley Release Area. Whilst the Addendum Report was endorsed by Council, it has not been endorsed to date by the Department.

Notwithstanding, it is noted that Clause 6.1(1) of the Pittwater LEP 2014 relating to the development of land in the Warriewood Valley Release Area states that the objectives of this Clause are as follows:

- “(a) To permit development in the Warriewood Valley Release Area in accordance with the Warriewood Valley Strategic Review Report and the Warriewood Valley Strategic Review Addendum Report;*
- (b) To ensure that development in that area does not adversely impact on waterways and creek line corridors, protects existing native riparian vegetation and rehabilitates the creek line corridors.”*

The table in clause 6.1(3) relates to buffer areas and sectors.

The site is within the Southern Buffer area as shown on the Pittwater LEP 2014 Urban Release Area Map. The Southern Buffer area is not listed in the table under Clause 6.1(3) which specifies the total number of dwellings to be erected on specified land areas in the Warriewood Valley. Its exclusion means the LEP makes no provision for an urban land release dwelling yield on the site beyond what is permissible under the RU2 zone.

Clause 6.1(4) of the Pittwater LEP 2014 also applies to the site and is relevant to the 2019 Planning Proposal as it provides that development consent must not be granted for development on land unless the consent authority is satisfied that the development will not have any significant adverse impact on any of the following:

- “(a) Opportunities for rehabilitation of aquatic and riparian vegetation habitats and ecosystems within creek line corridors,*
- (b) The water quality and flows within creek line corridors*
- (c) The stability of the bed, shore and banks of any watercourse within creek line corridors”*

6 Jacksons Road is shown as being partly located within the Narrabeen Creek Corridor on the Warriewood Valley Urban Release Area Map of the Pittwater LEP 2014.

The 2019 Planning Proposal is considered to be inconsistent with Clause 6.1(4) of the Pittwater LEP 2014 as it proposes to redevelop 6 Jacksons Road into active open space (synthetic surfaced sports fields) in association with the reconstruction of the existing Boondah Road sports fields requiring cut and fill earthworks and it does not provide for the full width rehabilitation of the existing creek line corridor.

1.5 Towards 2040 Draft Local Strategic Planning Statement

On 24 September 2019, the Council considered a report on the *Towards 2040 Draft Local Strategic Planning Statement* (Towards 2040 Draft LSPS) and resolved to place it on public exhibition for a minimum of 44 days and for the outcomes of the public exhibition to be reported to Council with the final Local Strategic Planning Statement. The Towards 2040 Draft LSPS was on public exhibition from 27 September 2019 to 10 November 2019 and submissions are currently being reviewed by Council.

The 2019 Planning Proposal report does not consider the Towards 2040 Draft LSPS which is not surprising as the Application (PEX2019/0003) was lodged by Henroth with Council on 29 August 2019 which is prior to the report on the Towards 2040 Draft LSPS being considered at Council's Ordinary Council Meeting on 24 September 2019 and subsequently being placed on public exhibition.

Towards 2040 Draft LSPS has been prepared by Council in accordance with the requirements of Section 3.9 of the EP&A Act 1979. It will inform the development of Council's new Local Environmental Plan (LEP) and Development Control Plan (DCP), broader Council policies and strategies and the assessment of Planning Proposals for changes to Council's planning controls.

Towards 2040 Draft LSPS aligns with the *North District Plan* and *Greater Sydney Region Plan* and acts as the bridge between strategic land use planning at the district level and local statutory planning for the Northern Beaches LGA.

By letter dated 8 November SJB Planning on behalf of Henroth comments that the 2019 Planning Proposal is consistent with the following planning priorities of the Towards 2040 Draft LSPS:

- Priority 2 – Protected and enhanced bushland and biodiversity.
- Priority 5 – Green urban environment.
- Priority 6 – High quality open space for recreation.
- Priority 9 – Infrastructure delivered with employment and housing growth.
- Priority 15 – Housing supply choice and affordability in the right locations.
- Priority 17 – Centres and neighbourhoods designed to reflect local character and lifestyles.

However, DFP considers that the 2019 Planning Proposal is inconsistent with the Council's Towards 2040 Draft LSPS in regards to the following statement in respect to an application for a Planning Proposal seeking additional residential density (pg 32):

"Managing growth and change

No immediate change is required to current planning controls to meet housing targets.

Planning Proposals seeking changes to the planning controls for additional development capacity through spot rezoning must have strategic merit and site – specific merit.

Planning Proposals that simply seek additional residential density above the current controls will have challenges in demonstrating their strategic merit as they are not necessary to achieve the housing targets and the strategic direction set out in Towards 2040." (see page 32)

It is also the opinion of DFP that the 2019 Planning Proposal is inconsistent with several of the strategic planning principles for managing growth and change specified in the Towards 2040 Draft LSPS which state:

- *Proposals must protect and enhance the natural blue grid and the community's environmental values and uses for the coast and waterways (P1)*

- *Proposals must retain native vegetation and maintain or enhance ecological functions in core areas and wildlife corridors (connection zones) (P2, P15)*
- *Proposals must contribute to the local green grid, retain mature trees and offset tree canopy loss by planting a minimum of 2 trees for any 1 tree removed (P5, P15)*
- *Proposals must not intensify urban development in areas where there are unacceptable risks from natural and urban hazards (P8, P15)*
- *Proposals must be supported by an infrastructure assessment and demonstrate that demand for the infrastructure it generates can be satisfied. This includes social and transport infrastructure. (P9, P11)*
- *Proposals must create a public benefit, such as open space, affordable rental housing and other identified infrastructure needs. A minimum 10% affordable rental housing is required for all planning proposal's with higher rates where feasible (P15, P16)"*

The Towards 2040 Draft LSPS states in relation to Implementation – Planning Controls:

- *The new Northern Beaches LEP and DCP will align with Towards 2040.*
- *Towards 2040 includes a number of actions to prepare new LEP and DCP controls. These will be addressed in our initial LEP and DCP, where possible. Where further work is required, it will be addressed in future amendments.*
- *Planning Proposals to amend the LEP, prepared by Council or applicants, must accord with the Environmental Planning and Assessment Act 1979.*
- *Planning Proposals must include an assessment of whether they will give effect to Towards 2040. In making this assessment, the priorities and related principles must be considered together. It is not appropriate to justify a planning proposal based on a single element of Towards 2040."*

DFP considers that it would be inappropriate for Council to support the 2019 Planning Proposal to rezone the site from RU2 - Rural Landscape zone to R3 – Medium Density Residential zone and RE1 – Public Recreation zone under an amendment to the Pittwater LEP 2014 to permit a four (4) storey residential flat building development and open space given the current status of the Towards 2040 Draft LSPS. A specific Priority Action referred to in the Towards 2040 Draft LSPS is for Council to undertake in the short term a Housing Strategy for the whole of the Northern Beaches LGA and to prepare a new Northern Beaches LEP and DCP.

2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. The Planning Proposal is the best and only means of achieving the Applicant's expressed objectives and intended outcomes.

Section B – Relationship to Strategic Planning Framework

Does the proposal have strategic merit?

3. Will the Planning Proposal give effect to the objectives and actions of the applicable regional plan, or district plan or strategy (including any exhibited draft plans or strategies)?

3.1 Greater Sydney Region Plan

The Greater Sydney Region Plan (March 2018) provides the vision for Greater Sydney as a Metropolis of Three Cities comprising the Western Parkland City, the Central River City and the Eastern Harbour City (the Greater Sydney Region Plan).

The Greater Sydney Region Plan provides the overall strategic planning framework and vision for the Greater Sydney Metropolitan Area with Policy directions in the key areas:

- Infrastructure and Collaboration;
- Liveability;
- Productivity; and
- Sustainability.

The Northern Beaches LGA is identified as being within the Eastern Harbour City under the Greater Sydney Region Plan.

The 2019 Planning Proposal report contends that the rezoning proposal to facilitate the residential flat building development and open space areas for the site is consistent with the relevant Directions and Objectives of the Greater Sydney Region Plan.

Notwithstanding, it is considered that the 2019 Planning Proposal is not consistent with the following Directions and Objectives of the Greater Sydney Region Plan:

Direction	Objective	Consistency
Liability		
A City for People	Objective 7: Communities are healthy, resilient and socially connected	It is agreed that the 2019 Planning Proposal is well located for active connection to existing facilities and services. It is not agreed that the 2019 Planning Proposal would deliver suitable land for active open space purposes given the site constraints and environmental values of 6 Jackson Road, which contains an EEC (Swamp Oak Flood Plain Forest). Furthermore, the proposed residential flat building development at 10 and 12 Boondah Road, would result in additional demand for open space as a result of the unplanned additional residential population. The 2019 Planning Proposal would preclude the future development of this land for open space purposes as envisaged in the Council's endorsed Local Strategic Planning documents.
A City of Great Places	Objective 13: Environmental Heritage is identified, conserved and enhanced	The 2019 Planning Proposal would not result in the conservation and enhancement of the environmental heritage attributes of the site which includes two (2) EEC areas. The 2019 Planning Proposal may result in adjoining adverse impacts on the Warriewood Wetlands, and the Narrabeen Creek Corridor including potential edge-effects associated with maintaining a bushfire APZ adjacent to the

Direction	Objective	Consistency
		Wetlands.
Sustainability		
A City in its Landscape	<p>Objective 27: Biodiversity is protected, urban bushland and remanent vegetation is enhanced.</p> <p>Objective 30: Urban Tree canopy cover is increased.</p> <p>Objective 31: Public Open Space is accessible, protected and enhanced</p>	<p>The 2019 Planning Proposal is inconsistent with Objectives 27, 30 and 31 as it will not protect the significant biodiversity values of the site which includes remnant native vegetation including two (2) EEC areas and it will result in the loss of existing urban tree canopy.</p> <p>6 Jacksons Road is not considered to be suitable for development as active open space (synthetic surfaced sports fields) due to site constraints and the significant environmental attributes of the land.</p> <p>The proposed residential flat building development of 10 and 12 Boondah Road would preclude the future provision of public open space as envisaged by Council's current local strategic planning policies.</p>

3.2 North District Plan

The *North District Plan* (March 2018) applies to the 2019 Planning Proposal.

The following provides commentary on aspects of North District Plan that are relied upon by the 2019 Planning Proposal as submitted and/or are relevant to a consideration of whether or not the Proposal has strategic merit.

Direction and Planning Priority	Comment
<p>Direction for Infrastructure and Collaboration</p> <p>Planning Priority N1 – Planning for a city supported by infrastructure</p>	<p>It is agreed that the proposed residential flat building development would provide housing which utilises existing available public infrastructure and the site has good connectivity to retail, commercial, community services, employment, recreational facilities and public transport services.</p>
<p>Direction for Liveability</p> <p>Planning Priority N3 – Providing services and social infrastructure to meet people's changing needs</p>	<p>The 2019 Planning Proposal is inconsistent with Planning Priority N3 as 10 and 12 Boondah Road are identified under the <i>Warriewood Valley Strategic Review Addendum Report</i> (December 2017) and the <i>Warriewood Valley Section 94 Development Contribution Plan</i> to be developed for active open space purposes and not for a proposed residential flat building development. 6 Jacksons Road is considered to be unsuitable for development as active open space (sports fields) due to its site constraints and environmental attributes. Part of 6 Jacksons Road is identified in the <i>Warriewood Valley Development Contribution Plan</i> as Creek line Corridor to be retained and rehabilitated as passive open space and to facilitate provision of drainage and floodway infrastructure to service the Warriewood</p>

Direction and Planning Priority	Comment
	Valley.
Planning Priority N4 – Fostering healthy, creative, culturally rich and socially connected communities	It is agreed that the proposed residential flat building development on 10 and 12 Boondah Road would be well connected to the local community with relatively good access to transport, retail, employment, community facilities and existing open spaces.
Planning Priority N5 – Providing housing supply, choice and affordability, with access to jobs, services and public transport	<p>It is agreed that the 2019 Planning Proposal would provide additional housing in an apartment style on 10 and 12 Boondah Road in a walkable neighbourhood with direct and safe access to shops, services and public transport. The 2019 Planning Proposal does not provide for any component of affordable housing but this could be addressed at the DA stage if the site is rezoned.</p> <p>The <i>North District Plan</i> sets a target for an additional 3,400 dwellings in the Northern Beaches LGA between 2016 and 2021. Council's Towards 2040 Draft LSPS states:</p> <p><i>"We are well on the way to achieving this target through developments in existing centres and in areas such as Warriewood Valley. We will develop a 6-10 year housing target and a 20 year target in our local housing strategy scheduled to be released in the first half of 2020."</i></p> <p>DFP considers it would be pre-emptive and result in an undesirable precedent to proceed with the 2019 Planning Proposal for the site pending the outcome of the Council's new Housing Strategy to be completed in the first half of 2020 consistent with Planning Priority 15 – "Housing supply, choice and affordability in the right locations" as specified in the Towards 2040 Draft LSPS.</p> <p>Council's Housing Strategy is the logical and proper process to determine through a comprehensive Northern Beaches LGA-wide analysis the best locations and types of residential accommodation and to give effect to Planning Priority N5.</p> <p>Furthermore, given the current situation with regards to achieving housing targets and planned supply, in the Northern Beaches LGA there is no imperative to progress Planning Proposals ahead of completion of the Housing Strategy targeted to be completed in 2020, particularly where the land involves site constraints, potential hazards and detrimental impacts which might outweigh any public benefit from an additional housing supply perspective.</p>
Planning Priority N6 – Creating and renewing great places and local centres and respecting the District's heritage.	It is agreed that the 2019 Planning Proposal would provide additional housing in close proximity to the B-Line public bus transport services and the site is located within a walkable catchment of the Warriewood Square Shopping

Direction and Planning Priority	Comment
	Centre.
Direction for Productivity Planning Priority N12 – Delivering integrated land use and transport planning and a 30-minute city	It is agreed that the site is within a walkable catchment to a range of existing retail, commercial, community and recreational areas as well as public transport services (the B-Line bus services).
Planning Priority N14 – Leveraging inter-regional transport connections	It is agreed the site is well located to the B-Line public bus services.
Direction for Sustainability Planning Priority N16 – Protecting and enhancing bushland and biodiversity	The 2019 Planning Proposal is considered to be inconsistent with Planning Priority N16 as it will not protect and enhance the significant native bushland vegetation, wildlife connectivity value and biodiversity of the site which includes two (2) Endangered Ecological Communities (EEC) and threatened fauna species and their habitats. The 2019 Planning Proposal is inconsistent with Planning Priority N16 as it relies on biodiversity offsets rather than attempting to avoid and minimise impacts on significant native vegetation and the biodiversity values of the site.
Planning Priority N18 – Better managing rural areas	It is agreed that the site is not part of the metropolitan rural area but rather is located within the Southern Buffer of the Warriewood Valley Urban Release area.
Planning Priority N19 – Increasing urban tree canopy cover and delivering Green Grid connections	The 2019 Planning Proposal is inconsistent with Planning Priority N19 as the proposed residential flat building development on 10 to 12 Boondah Road and the proposed active open space (new synthetic surfaced sports fields) on 6 Jacksons Road would reduce the existing native tree canopy cover and it would not retain and facilitate the vegetated rehabilitation of the full extent of the Narrabeen Creek Line Riparian Corridor as shown on the Warriewood Valley Urban Release Area Map of the Pittwater LEP 2014.
Planning Priority N22 – Adapting to the impacts of urban and natural hazards and climate change	The 2019 Planning Proposal is inconsistent with Planning Priority N22 as it does not satisfactorily address the natural and urban hazards of the site and locality, particularly in respect to flooding, bushfire and potential for land contamination and acid sulfate soils.
Direction of Implementation Planning Priority N23 – Preparing local strategic planning statements informed by local strategic planning	<p>The 2019 Planning Proposal is inconsistent with Planning Priority N23 as it is considered to be inconsistent with Planning Priorities 1, 2, 5, 6, 8, 9 and 15 of Council's Towards 2040 Draft LSPS. In any event, the determination as to whether the site should be developed for medium density housing and open space purposes should await the outcome of Council's Housing Strategy to be completed in the first half of 2020 and the preparation of the new Northern Beaches LEP and DCP.</p> <p>It is noted that the Toward 2040 Draft LSPS provides as an Action 6.5 <i>"Investigate the provision of sports fields in new housing development areas including Warriewood Valley"</i></p>

Direction and Planning Priority	Comment
	<i>and potentially Ingleside in the short term."</i>

4. Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?

The 2019 Planning Proposal report states in relation to this matter as follows:

"The Local Strategic Planning Statement (LSPS) for the Northern Beaches LGA is yet to be finalised or exhibited. Exhibition is expected in October 2019.

The Warriewood Valley Strategic Review (WVSR) was endorsed by the DP&E in 2013.

Of relevance however, is the Warriewood Valley Planning Framework Addendums (Framework) and Warriewood Valley Development Contributions Plan, Amendment 16, Revision 3."

The *Warriewood Valley Strategic Review Addendum Report* was originally adopted by Council on 17 November 2014, with further amendments adopted on 19 December 2017 and coming into effect on 13 January 2018 (the Addendum Report). The purpose of the Addendum Report was to identify and recommend a forward path for the remaining undeveloped sectors in the Warriewood Valley Urban Release Area including the investigation of development opportunities in the Southern Buffer which includes the site of the 2019 Planning Proposal.

Whilst the Addendum Report has been endorsed by the Council, it has not been endorsed to date by the Department.

Notwithstanding, the first objective of Clause 6.1 (Warriewood Valley Release Area) of the Pittwater LEP 2014, which was approved by the Department and the Minister for Planning, gives effect to both the *Warriewood Valley Strategic Review Report* and the *Warriewood Valley Strategic Review Addendum Report* stating as follows:

"6.1 Warriewood Valley Release Area

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

(a) *To permit development in the Warriewood Valley Release Area in accordance with the Warriewood Valley Strategic Review Report and the The Warriewood Valley Strategic Review Addendum Report,*

(b) *To ensure that development in that area does not adversely impact on waterways and creek line corridors, protects existing native riparian vegetation and rehabilitates the creek line corridors."*

The 2019 Planning Proposal is inconsistent with the Addendum Report which recommends that 2 and 4 Jacksons Road and 2, 2A, 3, 4A, 6, 8, 10, 12 Boondah Road should have a land use designation of "Recreation" to be acquired by the Council for public open space purposes and that 6 Jacksons Road have "No Development Potential" and accordingly, this allotment should remain RU2 Rural Landscape zone under Pittwater LEP 2014.

The *Warriewood Valley Contributions Plan* (Amendment 16 Revision 3) 2018 identifies part of 6 Jacksons Road as Creek line Corridor land to be dedicated with any future development of the site as a part of the *Multi Functional Creek Line Corridor Strategy* for the Warriewood Valley Release Area. The *Warriewood Valley Contributions Plan* identifies 10 and 12 Boondah Road as "*Land identified for purchase for active open space*".

The Towards 2040 Draft LSPS was adopted by Council at its Ordinary Council Meeting on 24 September 2019 and, accordingly, it is not a final Local Strategic Planning Statement endorsed by Council and the Department. As previously noted, the 2019 Planning Proposal Application was lodged with Council on 29 August 2019 and, as a result, this application does not address the Towards 2040 Draft LSPS.

However, by letter dated 8 November 2019 SJB Planning on behalf of the applicant provided an assessment of the 2019 Planning Proposal under the Towards 2040 draft LSPS submitting consistency with the following planning priorities:

- Priority 2 – Protected and Enhanced Bushland and Biodiversity.
- Priority 5 – Greener Urban Environmental.
- Priority 9 – Infrastructure Delivered with Employment and Housing Growth.
- Priority 15 – Housing Supply, Choice and Affordability in the Right Locations.
- Priority 17 – Centres and Neighbourhoods Designed to Reflect Local Character and Lifestyle.

This Assessment Report has reviewed the 2019 Planning Proposal under the Towards 2040 Draft LSPS and it is considered to be inconsistent with relevant Planning Directions and Priorities and with relevant Planning Directions and Priorities and would be pre-emptive of Council preparing and implementing its Housing Strategy for the whole of the Northern Beaches LGA.

Furthermore, Planning Priority 6 of the Towards 2040 Draft LSPS is “High quality open space for recreation” which states:

“Present estimates predict a 40-hectare shortfall of land for sport by 2031 and demand on regional open space, such as beaches will increase.” (see page 68)

“Principles

- *Improve the provision, diversity and quality of open space for recreation.*
- *Design open space to be flexible, versatile, multi functional and fit for purpose.*
- *Ensure open space responds to demand and meets diverse community needs.*
- *Use open space to connect people to nature.*
- *Ensure new open space contributes to, connects and enhances the local green grid.*
- *Design sustainable open space that considers life cycle costs, management and maintenance.*
- *Encourage collaboration and partnerships to promote shared use.*
- *Support roof top parks, increase building setbacks and conservation of road space in built-up areas.*
- *Design vibrant, accessible and interactive open space.*
- *Ensure access to natural open space and waterways is sustainable so that these areas are preserved for the future.*
- *Locate all new residential development within 400m of open space and all high density areas within 200m of open space.” (see page 69)*

Action 6.5 of the Towards 2040 Draft LSPS provides that Council will in partnership with DPIE in the short term “Investigate the provision of sports fields in new housing development areas including Warriewood Valley and potentially Ingleside”. (see page 69)

(a) Does the proposal have strategic merit?

For the reasons outlined in this Assessment Report, DFP considers that the 2019 Planning Proposal does not have satisfactory Strategic Planning Merit having regard to the *Greater Sydney Region Plan*, *North District Plan*, *Warriewood Valley Strategic Review Addendum Reports* (2014 and 2017), *Warriewood Valley Development Contribution Plan* and the *Towards 2040 Draft LSPS*.

(b) Does the proposal have site-specific merit, having regard to the following:

<p>The natural environment (including known significant environmental values, resources or hazards),</p>	<p>The 2019 Planning Proposal either does not have natural environment merit or there is insufficient documentation to conclude such merit.</p> <p>The following areas are of concern:</p> <ul style="list-style-type: none"> • Bushfire • Acid Sulfate Soils • Flora and fauna (Biodiversity) • Soil stability, erosion, sediment, landslip assessment and subsidence • Stormwater and flood management including potential adverse impacts on the adjacent Warriewood Wetlands and the Narrabeen Creek Line Riparian Corridor. • Infrastructure servicing • Coastal management • Extent of cut and fill earthworks
<p>The existing uses, approved uses, and likely future uses of land in the vicinity of the proposal.</p>	<p>Although the site borders on R3 Medium Density Residential zoned land to the north and Warriewood Square Shopping Centre (zoned B2 Local Centre) to the south west, the 2019 Planning Proposal is inconsistent with the predominantly one (1), two (2) and three (3) storey mixed residential character of the surrounding area.</p> <p>The intended outcome of the 2019 Planning Proposal is inconsistent with the likely future local strategic planned land use of 10 and 12 Boondah Road, Warriewood which is intended for active open space and therefore does not have merit.</p> <p>The proposition that 6 Jackson Road has utility as active open space (synthetic surfaced sports fields) is not supported due to the site constraints and environmental attributes of the land.</p>
<p>The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.</p>	<p>The 2019 Planning Proposal will increase the demand for public infrastructure and services and would require additional open space in a locality that already suffers from an under supply of open space.</p> <p>The 2019 Planning Proposal will not only increase the demand for open space but it will significantly reduce the opportunities for additional required open space to be provided within the Warriewood Valley Release Area on land suitable for such purposes.</p> <p>If the 2019 Planning Proposal were to progress it would significantly exacerbate a clear deficit in provision of active open space to accommodate the needs of residents in the Warriewood Valley Release Area. The 2019 Planning Proposal has not provided alternative suitable locations adjacent to/within the Warriewood Valley that are not already utilised for active</p>

	<p>open space. 6 Jacksons Road is considered to be unsuitable for active open space due to site constraints and environmental values of the land which includes an area of significant biodiversity valued EEC.</p> <p>A traffic and transport study should be undertaken that includes, inter alia, the identification of a funding and delivery mechanism that outlines a proposed package of infrastructure upgrade works to support the proposed rezoning including the provision of proposed public pathways.</p>
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5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

Title of State Environmental Planning Policy (SEPP)	Applicable	Consistent
SEPP No 1 – Development Standards	YES	YES
SEPP No 19 – Bushland in Urban Areas	NO	N/A
SEPP No 21 – Caravan Parks	YES	YES
SEPP No 30 – Intensive Agriculture	YES	YES
SEPP No 33 – Hazardous and Offensive Development	YES	YES
SEPP No 36 – Manufactured Home Estates	NO	N/A
SEPP No 44 – Koala Habitat Protection	YES	YES
SEPP No 47 – Moore Park Showground	NO	N/A
SEPP No 50 – Canal Estate Development	YES	YES
SEPP No 52 – Farm Dams and Other Works in Land and Water Management Plan Areas	NO	N/A
SEPP No 55 – Remediation of Land	YES	NO
SEPP No 62 – Sustainable Aquaculture	YES	YES
SEPP No 64 – Advertising and Signage	YES	YES
SEPP No 65 – Design Quality of Residential Flat Development	YES	YES
SEPP No 70 – Affordable Housing (Revised Schemes)	YES	YES
SEPP (Affordable Rental Housing) 2009	YES	YES
SEPP (Building Sustainability Index: BASIX) 2004	YES	YES
SEPP (Exempt and Complying Development Codes) 2008	YES	YES
SEPP (Housing for Seniors or People with a Disability) 2004	YES	YES
SEPP (Infrastructure) 2007	YES	YES
SEPP (Integration and Repeals) 2016	YES	YES

Title of State Environmental Planning Policy (SEPP)	Applicable	Consistent
SEPP (Kosciuszko National Park—Alpine Resorts) 2007	NO	N/A
SEPP (Kurnell Peninsula) 1989	NO	N/A
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	YES	YES
SEPP (Miscellaneous Consent Provisions) 2007	YES	YES
SEPP (Penrith Lakes Scheme) 1989	NO	N/A
SEPP (Rural Lands) 2008	NO	N/A
SEPP (State and Regional Development) 2011	YES	YES
SEPP (State Significant Precincts) 2005	YES	YES
SEPP (Sydney Drinking Water Catchment) 2011	YES	YES
SEPP (Sydney Region Growth Centres) 2006	YES	YES
SEPP (Three Ports) 2013	NO	N/A
SEPP (Urban Renewal) 2010	NO	N/A
SEPP (Western Sydney Employment Area) 2009	NO	N/A
SEPP (Western Sydney Parklands) 2009	NO	N/A
SEPP (Coastal Management)	YES	NO

In relation to *SEPP No. 55 – Remediation of Land*, the 2019 Planning Proposal Application has not included a Site Contamination Assessment report. Clause 6(2) of SEPP 55 requires the consent authority to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines. Such report must be provided, and Council must have regard to it prior to any resolution to forward a Planning Proposal for a Gateway Determination.

A recent NSW Supreme Court judgement deemed a Gateway Determination for a Planning Proposal invalid as a site contamination report was not provided or considered. (*Moorebank Recyclers Pty Ltd v Tanlane Pty Ltd [2018] NSWCA 304*).

The site of the 2019 Planning Proposal as well as surrounding properties including the Warriewood Wetlands falls within the mapped areas of the SEPP (Coastal Management). The 2019 Planning Proposal report does not provide an assessment of consistency under the provisions of SEPP (Coastal Management) particularly have regard to the site being within and adjoining mapped Coastal Wetlands, Littoral Rainforest and Coastal Environment Area.

The following is a list of the deemed SEPP's formerly Sydney Regional Environmental Plans relevant to the site.

Title of deemed SEPP	Applicable	Consistent
SREP No 20 – Hawkesbury-Nepean River (No 2 -1997)	YES	YES

6. Is the Planning Proposal consistent with applicable Ministerial Directions (S.9.1 Directions)?

1 Employment and Resources			
	Direction	Applicable	Consistent
1.1	Business and Industrial Zones	YES	YES
1.2	Rural Zones	YES	NO
1.3	Mining, Petroleum Production and Extractive Industries	NO	N/A
1.4	Oyster Aquaculture	NO	N/A
1.5	Rural Lands	NO	N/A

The 2019 Planning Proposal is not consistent with Direction “1.2 Rural zones” as it intends to rezone the land from a RU2 – Rural Landscape zone to R3 – Medium Density Residential zone and RE1 – Public Recreation zone under an amendment to the Pittwater LEP 2014 to permit a 4 storey residential flat buildings development on 10 and 12 Boondah Road and open spaces purposes including 2 new sports fields on 6 Jacksons Road. The Addendum Report which is the current local strategy framework does not support the rezoning of the site from RU2 zone to R3 zone (10 and 12 Boondah Road) and RE1 zone (6 Jacksons Road).

2 Environment and Heritage			
	Direction	Applicable	Consistent
2.1	Environment Protection Zones	YES	NO
2.2	Coastal Protection	NO	N/A
2.3	Heritage Conservation	YES	NO
2.4	Recreation Vehicle Areas	YES	YES
2.5	Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	NO	N/A

The 2019 Planning Proposal is not consistent with “2.1 Environmental Protection zones” due to:

- The proposal does not include adequate provision for the protection and conservation of environmentally sensitive areas of the site which include two (2) EEC listed areas as well as listed threatened endangered fauna species and habitats.
- The provision and maintenance of Asset Protection Zones (APZ) for the fire protection of the residential flat building development on 10 and 12 Boondah Road and the construction of the sports fields will adversely impact on the biodiversity values of the site (including two (2) EEC areas) as well as potentially adversely impacting on the adjoining Warriewood Wetlands and the Narrabeen Creek Line Riparian Corridor.

The 2019 Planning Proposal is not consistent with “2.3 Heritage Conservation” due to:

- The 2019 Planning Proposal Application does not provide an Aboriginal Cultural Heritage Assessment report which is necessary to investigate the archaeological and cultural heritage values associated with the site in order to inform the suitability of the proposed residential flat building development and proposed open space envisaged by the current 2019 Planning Proposal prior to any potential rezoning of the land.

3 Housing, Infrastructure and Urban Development			
	Direction	Applicable	Consistent
3.1	Residential Zones	YES	YES
3.2	Caravan Parks and Manufactured Home Estates	YES	YES
3.3	Home Occupations	YES	YES
3.4	Integrating Land Use and Transport	YES	YES
3.5	Development Near Licensed Aerodromes	NO	N/A
3.6	Shooting Ranges	NO	N/A

4 Hazard and Risk			
	Direction	Applicable	Consistent
4.1	Acid Sulfate Soils	YES	NO
4.2	Mine Subsidence and Unstable Land	NO	N/A
4.3	Flood Prone Land	YES	NO
4.4	Planning For Bushfire Protection	YES	NO

The 2019 Planning Proposal is not consistent with “4.1 Acid Sulfate Soils” due to:

- The site of the 2019 Planning Proposal has a high probability of containing acid sulfate soils. The proposed residential flat building development and the proposed open space areas include substantial excavation for the basement level car parking areas, flood storage areas and for the construction of the synthetic surfaced sports fields and reconstruction of the existing Boondah Road sports fields. The proposed development has the potential to alter the ground water table and pose threats of acid sulfate soils impacting on the Narrabeen Creek Riparian Corridor, Warriewood Wetlands, ground dependent ecosystems and the downstream environment.

The 2019 Planning Proposal Application includes a Memorandum prepared by Douglas Partners dated 2 May 2017 which comments on the high probability of acid sulfate soils (ASS) occurring on the site and states:

“A detailed Acid Sulfate Soils Management Plan will be required for this site prior to commencement of construction to manage the impacts of ASS”

It is noted that the Memorandum prepared by Douglas Partners dated 2 May 2017 relates to the previous 2016 Planning Proposal and not the current 2019 Planning Proposal.

The 2019 Planning Proposal is not consistent with "4.3 Flood Prone Land" in addition to Clause 7.3 of the Pittwater LEP 2014. The 2019 Planning Proposal has not demonstrated that the proposed development:

- Is compatible with the flood hazard of the land;
- Will not significantly adversely affect flood behavior;
- Incorporates appropriate measures to manage risk to life from flood;
- Will not significantly adversely affect the environment.

The 2019 Planning Proposal is not consistent with "4.4 Planning for Bushfire Protection" due to:

- By letter dated 22 October 2019 NSW Rural Fire Service (RFS) has advised that they have reviewed the 2019 Planning Proposal in consideration of the requirements set out in the new Draft Planning for Bushfire Protection (PBP), and *"raises no objection to the proposed rezoning of the site."* Notwithstanding the RFS indicate that based upon an assessment of the available information and limited plans, the following comments are made:
 - *the proposed 15m setback to the western boundaries/Warriewood Wetlands may not be sufficient to comply with the minimum requirements set out in Appendix 1. The potential bushfire hazards have been assessed as a Coastal Swamp Forest and falls within a Forest classification within the revised PBP. Where mixes of vegetation formations are located together, the vegetation formation providing the greater hazard shall be used for the purpose of the assessment.*
 - *buildings exceeding three storeys in height are considered to be multi-storey buildings. Multi-storey buildings are required to comply with the performance criteria within Chapter 5 including the requirement for an Asset Protection Zone (APZ) which meets and threshold of 29kW/m², along with additional considerations set out in Section 8.2.2 of the PBP*
 - *while the site can accommodate residential development any future development plans and bushfire assessment report must address the above issues and demonstrate compliance with the PBP."*

Council's Biodiversity Bushfire internal referral response comments:

- *My review has focused on the relevant performance criteria to be achieved for future residential development in accordance within Pre-release PBP 2018. I haven't assessed the adequacy of water supply, road network etc or other aspects of the Ministerial Direction requirements.*
- *PBP states that "Where mixes of vegetation formations are located together, the vegetation formation providing the greater hazard shall be used for the purpose of assessment. The combination of vegetation and slope that yields the worst case scenario shall be used."*
- *Based on this requirement, the vegetation formation class providing the greatest hazard within Warriewood Wetlands is Coastal Swamp Forest*
- *Setbacks for Building E (NB referred incorrectly to as Building Din the Bushfire Report) should be based on this Forest vegetation formation*
- *Based on Table A1.12.5 of PBP 2018, and applying the minimum APZ requirements from the Travers report used for Building A, a minimum setback of 24 metres is required from the Warriewood Wetlands and retained vegetation on the site.*
- *Travers have used BAL- 29 construction in their assessment, and PBP states that for BAL- 29 "attack by burning debris is significant and radiant heat flux (not greater than 29kW/m²) threatens building integrity. Specific construction requirements for ember*

and higher radiant heat are warranted. Some flame contact is possible." The application of BAL-19 construction may be more appropriate for the location in order to avoid flame contact, and this would require a minimum setback of 33 metres.

- *The current setback of 15 metres provided in the Plans for Building E would equate to BAL - Flame Zone, and the RFS would not accept this for a future development.*

The concept plans for the proposed residential flat building development prepared by Buchan Architects submitted with the 2019 Planning Proposal show the western most residential flat building set back approximately 15 metres to the south-west site boundary adjoining the Warriewood Wetlands which may not be a sufficient APZ to comply with the revised PBP.

It is further noted that the concept plans for the proposed residential flat building development referred to in the Bushfire Protection Assessment report prepared by Travers Bushfire and Ecology dated August 2019 are different from the concept plans prepared by Buchan Architects submitted with the 2019 Planning Proposal Application.

5 Regional Planning			
	Direction	Applicable	Consistent
5.1	Implementation of Regional Strategies	NO	N/A
5.2	Sydney Drinking Water Catchments	NO	N/A
5.3	Farmland of State and Regional Significance on NSW Far North Coast	NO	N/A
5.4	Commercial and Retail Development along the Pacific Hwy, North Coast	NO	N/A
5.5	Development in the vicinity of Ellalong, Paxton and Millfield (revoked)	-	-
5.6	Sydney to Canberra Corridor (revoked)	-	-
5.7	Central Coast (revoked)	-	-
5.8	Second Sydney Airport: Badgerys Creek	NO	N/A
5.9	North West Rail Link Corridor Strategy	NO	N/A
5.10	Implementation of Regional Plans	YES	NO

6 Local Plan Making			
	Direction	Applicable	Consistent
6.1	Approval and Referral Requirements	YES	YES
6.2	Reserving Land for Public Purposes	YES	YES
6.3	Site Specific Provisions	YES	YES

7 Metropolitan Planning			
	Direction	Applicable	Consistent

7.1	Implementation of the Metropolitan Strategy	YES	NO
7.2	Implementation of Greater Macarthur Land Release Investigation	NO	N/A
7.3	Parramatta Road Corridor Urban Transformation Strategy	NO	N/A

The 2019 Planning Proposal is not consistent with “5.10 Implementation of Regional Plans” and “7.1 Implementation of the Metropolitan Strategy” for the reasons outlined earlier in this Assessment Report.

Section C Environmental, social and economic impact

7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The 2019 Planning Proposal report states as follows:

“The request for a Planning Proposal is supported by an ecological constraints analysis. This analysis has been based upon field work and research of various registers. The assessment indicates that development would not have a detrimental impact upon critical habitat or threatened species population. The assessment does recommend target surveys for Koalas and Swift Parrot to satisfy the Bioversity Conservation Act 2016 and the Environmental Protection and Biodiversity Conservation Act 1999.”

Council’s Environment Officer Bushland and Biodiversity Section has assessed the 2019 Planning Proposal in respect to the bushland and biodiversity impacts of the proposed development and states as follows:

“The subject lots contain significant biodiversity and wildlife connectivity value, including Threatened Ecological Communities (TEC) and threatened species and their habitats. This is detailed within the submitted comprehensive Biodiversity Constraints Assessment (Travers Bushfire and Ecology, August 2019).

The Planning Proposal, as presented, has not been sited and designed to avoid and minimise impacts to biodiversity and will result in a direct net loss of biodiversity. In fact, impacts to TECs have increased compared with the previous proposal. Additional impacts include a reduction in wildlife connectivity function of the land and indirect impacts associated within [sic] increased light and noise pollution.

As per the mitigation hierarchy, any proposal must first avoid, then minimise impacts to biodiversity, prior to assessing the offset requirements for the residual biodiversity impacts. The current proposal will trigger entry into the Biodiversity Offset Scheme (BOS) via at least 2 of the 3 triggers, suggesting a significant impact to threatened biodiversity.

We note that formal offset obligations required by the BOS for these biodiversity values (TECs and threatened species) are not available on the Northern Beaches and hence entry into the BOS should be avoided as this results in net loss of biodiversity within the LGA.

Council’s Natural Environment – Biodiversity section recommends refusal of the proposal in its current form.”

Council’s Environmental Officer, Bushland and Biodiversity Section has assessed the Travers Bushfire and Ecology letter dated 8 November 2019, submitted by the applicant with the revised VPA offer and states as follows:

“In summary, the letter provides no new information and in some places contradicts their previous report. Our recommendation for refusal still stands.

- *Under the NSW BC Act biodiversity framework, development impacts which exceed the biodiversity offset scheme threshold, such as this proposal, are considered to significantly affect threatened entities.*
- *The proposal has not been sited and designed to avoid and minimise impacts to threatened entities. Previous designs would result in less impact to threatened entities.*
- *There are likely indirect impacts which have not been quantified or assessed, including edge-effects into the adjoining EEC within Warriewood Wetlands, likely reduction in wildlife connectivity, removal of an unknown number of mature Eucalyptus robusta which provide an important winter-flowering food source, and increased light pollution and noise.*
- *There are no like-for-like offsets available within the Northern Beaches LGA.”*

8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Flooding Risk

The 2019 Planning Proposal states as follows:

“The site is subject to flood inundation. The concept is supported by a flood management study providing an overview on the ability to manage flood impacts, retain flood conveyance and provide flood evacuation routes”.

Council’s Stormwater, Floodplain Engineering Section has assessed the 2019 Planning Proposal and states as follows:

“The site is identified as being partially located within the high flood risk precinct as identified in both the Narrabeen Lagoon Flood Study, 2013 and Ingleside, Elanora and Warriewood Overland Flow Study, 2019. The information provided (by) the applicant does not provide sufficient information to satisfy the provisions and is inconsistent with Section 9.1 Direction 4.3 Flood Prone Land in addition to Clause 7.3 of the Pittwater LEP 2014. Currently the proposal has not demonstrated that the development:

- *Is compatible with the flood hazard of the land*
- *Will not significantly adversely affect flood behavior*
- *Incorporates appropriate measures to manage risk to life from flood*
- *Will not significantly adversely affect the environment.”*

Council’s Coast and Catchments Section has assessed the 2019 Planning Proposal and states as follows:

“Relevant riparian and water quality controls:

Pittwater LEP 6.1 (1) (b) and (4)

Pittwater 21 DCP C6.1 and C6.6

Warriewood Valley Water Management Specification)

Narrabeen Creek (riparian):

A 25 metre vegetated riparian zone is required either side of the creek to help maintain a healthy ecosystem and wildlife corridor. An additional 25m private buffer is required either side of the riparian zone (together totalling 100m – 50m either side of the creek) that could incorporate playing fields, water sensitive urban design treatment devices or shared paths.

The developer is only required under their development to restore the area of creek corridor on their land at 6 Jackson Road, Warriewood. Appropriate setbacks (15m) are maintained to Warriewood Wetlands in the concept plan provided.

Opportunities:

The culvert/pipe under Warriewood Square is in poor condition and needs upgrading. Taking flows away from this pipe will extend the life of this section. I believe upgrading of the pipe is the responsibility of Warriewood Square. The remainder of this section of creek between Warriewood Square and Boondah Road has not yet been restored, but is Council's responsibility. There are only minor works required here.

No work is required to the creek upstream of Boondah Road to Macpherson Street. The lower section was rehabilitated as a wetland about 20 years ago and the upper section is owned by Sydney Water.

Stormwater quality:

The development is expected to be able to meet water quality requirements, and therefore this is not a constraint on the development."

Bushfire risk

The 2019 Planning Proposal states as follows:

"The Masterplan developed for the site has also had regard for Bushfire Hazard and includes appropriate setbacks and Asset Protection Zones (APZ) from potential sources of hazard (Warriewood Wetlands and creek line corridors)".

As previously noted in this report, the RFS has reviewed the 2019 Planning Proposal and raises no objection to the proposed rezoning of the site. However, the RFS has commented that the proposed 15 metre setback to the south-west site boundary which adjoins the Warriewood Wetlands may not be sufficient to comply with the minimum requirements set out in Appendix 1 of the new Draft Planning for Bushfire Protection (PBP).

Site Contamination

The 2019 Planning Proposal report states:

"The site has not been the subject of environmental site assessment in regard to potential contamination, however it is acknowledged that the area may have been subject to fill that has the potential for contamination. Such Areas of Environmental Concern (AECs) will require further investigation and potential remediation, which can reasonably required as a condition of gateway determination. However, it is unlikely that filling would prevent the area covered by the Planning Proposal request from being made suitable for residential use and occupation without risk to human health."

The 2019 Planning Proposal does not comply with Clause 6 of SEPP No. 55 – Remediation of Land as no Site Contamination Assessment report has been submitted by the proponent for the current rezoning proposal and this is a mandatory requirement prior to a Gateway Determination.

9. How has the Planning Proposal adequately addressed any social and economic effects?

Social Effects

The 2019 Planning Proposal report states:

"The Planning Proposal will provide an opportunity for the redevelopment of the site for additional housing adjacent to an existing local centre, accessible to public transport and open space areas.

The proposal is supported by an offer to dedicate land for open space.....

The potential for additional dwellings is unlikely to place unreasonable burden on community facilities earmarked to be constructed in the surrounding urban release areas, which could be augmented through Council's normal collection of Section 7.11 Contributions.

A Social Impact Statement will be prepared should the proposal obtain Gateway determination."

The Council's Strategic and Place Planning Section has assessed the 2019 Planning Proposal and states:

"The additional development contemplated by this Planning Proposal will increase the infrastructure requirements in Warriewood Valley.

Some of the identified infrastructure in the Warriewood Valley Contributions Plan may not require augmentation, such as the creek line corridor land, community facility floor space, and potentially the pedestrian and cyclist link.

Conversely, the increase in residential population will result in additional active open space area and potentially, traffic and transport improvements. The proposal will compromise the land identified for future sports fields. Finding 4.64 hectares of land suitable for sports fields in or close proximity to Warriewood Valley will be the challenge. In the absence of the traffic modelling and the agreement by the RMS, the impacts of the proposed development on traffic and transport are unknown.

Nonetheless, there is insufficient nexus and inequitable for other developments in the Warriewood Valley Release Area to contribute towards the cost of future traffic improvements specific to this individual development."

Economic Effects

The 2019 Planning Proposal report states:

"The rezoning will provide increased housing supply and diversity in a location with good access to nearby services. The economic impact of the proposal would be the subject of a full assessment should the proposal achieve Gateway Determination."

It is agreed that the 2019 Planning Proposal would provide additional housing with good connectivity to nearby retail, commercial, community, schools and recreational facilities, as well as the B-Line public bus services. However, the proposed residential flat building development on 10 and 12 Boondah Road would not only increase the demand for the provision of open space and other infrastructure requirements in the Warriewood Valley urban release area, it would also preclude the intended future development of the site for open space purposes, including sports fields in accordance with Council's adopted *Warriewood Valley Strategic Review Addendum Report* (December 2017) and Council's *Warriewood Valley Development Contribution Plan*.

Section D State and Commonwealth interests

10. Is there adequate public infrastructure for the Planning Proposal?

Council's Strategic and Place Planning Unit have assessed the infrastructure requirements for the 2019 Planning Proposal and states as follows:

"Since the proposed development is in the Southern Buffer Area, a traffic modelling of the proposal reviewed and agreed to by RMS, would be required to determine the impacts of the development on traffic and transport.

If agreed to then, any traffic improvements generated by this development alone including the frontage of Boondah Road will need (to) be incumbent on the developer at the DA Phase as these development -specific traffic improvements are required due to this development occurring. It would be inequitable on other developments in the Warriewood Valley Release Area to include such future traffic improvements specific to this individual development into the WWV Contributions Plan now when the land release development is nearing completion.

Summary

The additional development contemplated by the Planning Proposal will increase the infrastructure requirements in Warriewood Valley some of the identified infrastructure in the Warriewood Valley Contribution Plan may not require augmentation, such as the creek line corridor land, community facility floorspace, and potentially the pedestrian cyclist link.

Conversely, the increase in residential population will result in additional active open space area and potentially, traffic and transport improvements. The proposal will compromise the land identified for future sports fields. Finding 4.64 hectares of land suitable for sports fields in or close proximity to Warriewood Valley will be the challenge. In the absence of the traffic modelling and the agreement of the RMS the impacts of the proposed development on traffic and transport are unknown.

Nonetheless, there is insufficient nexus and inequitable for other developments in the Warriewood Valley Release Area to contribute towards the cost of future traffic improvements specific to this individual development."

By email dated 30 October 2019 the RMS have advised Council:

"After reviewing the Traffic report, RMS notes that the current planning proposal would have a traffic generation that is significantly less than the previous proposal that RMS commented on in 2017. Considering this, if the modelling has been done correctly, I cannot see any major issues with this planning proposal proceeding.

Please consider the above as preliminary advice only and may change on review of the traffic modelling. Please send through the Sidra Modelling file for review so that we can provide a formal response."

11. What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway Determination?

Not applicable at this stage as the 2019 Planning Proposal has not progressed to the Gateway for a determination.

COMMUNITY ENGAGEMENT

Preliminary (non-statutory) public notification of the 2019 Planning Proposal was undertaken by Council between 14 and 29 September 2019. The revised VPA offer and other supporting documents submitted by Henroth to Council on 8 November 2019 have not been placed on a preliminary (non-statutory) public notification.

Property owners within the Warriewood Valley and one Community Group were sent notification letters by Council (837), and the 2019 Planning Proposal was advertised in the Manly Daily on 14 and 21 September 2019. The relevant 2019 Planning Proposal documents were made available electronically on Council's website and in hard copy in Council's Customer Service Centres at Manly, Dee Why and Mona Vale.

During the preliminary (non-statutory) notification of the 2019 Planning Proposal a total of 54 submissions were received from the local community consisting of:

- 48 on line submissions via the Council's "Your Say" project web page;
- 5 emails directed to the Council;
- 2 letters posted to the Council.

Note: The Manly Warringah Football Association lodged the same submission online and by post and is counted as one submission.

Of 54 submissions, 7 were in support and 47 objected to the 2019 Planning Proposal. A copy of the submissions received is contained in **Attachment 1**. The matters raised in submissions that support the 2019 Planning Proposal are:

- Infill urban development opportunity.
- Consistency with adjoining developments in the Warriewood Valley.
- The 2019 Planning Proposal is consistent with the Greater Sydney Region Plan, North District Plan, Pittwater Local Planning Strategy 2011, Warriewood Valley Planning Framework 2010 and the Warriewood Valley Strategic Review Addendum.
- The Planning Proposal is supported by an analysis of the opportunities and constraints of the site.
- The Planning Proposal has the potential to provide accommodation that is well located to the B-Line public bus transport services and Warriewood Square shopping centre.
- The proposed development is the first step to complete the Southern Buffer.
- It is an opportunity for the Council to acquire land for the community.
- Consistent with the local character.
- The site is unsightly and overgrown with Lantana and scrub.
- People need homes to live in and this is an ideal location.
- Provision of additional sports fields is supported by Narrabeen Football Club and Manly Warringah Football Association.

The objection issues raised in submissions to the 2019 Planning Proposal are as follows:

- Objection to residential flat buildings above 3 storeys in height in the Warriewood Valley
- Need more open space, particularly sports fields.
- Undesirable precedent.
- Adverse traffic impacts.
- The 2019 Planning Proposal is inconsistent with the Warriewood Valley Strategic Review.
- Minimum lot size of 1ha should not be deleted.
- Destruction of the creek line vegetation.
- Need for a community consensus on what the Southern Buffer should be used for in the future.
- Increase to the dwelling yield to 120 dwellings for the site is inappropriate.
- The proposal will result in an unacceptable loss of bushland.

- The site is in a flood zone.
- VPA offer to dedicate open space (synthetic surface sports fields) will result in little benefit as the requested trade-off is the proponent's release from any Section 94 Contribution obligations. (Note: The revised VPA offer from Henroth agrees to payment of Section 94 levies.)
- Adverse impacts of spot rezonings.
- Parking impacts of the proposal and lack of existing parking for the existing land uses including sports fields in the Warriewood Valley.
- Over development of the site.
- Need more schools.
- No infrastructure to support the proposed development.
- Proposed development will have adverse impact on the Warriewood Wetlands.
- Flooding risk.
- Bushfire risk.
- Adverse impacts on native flora and fauna (biodiversity).

AGENCY REFERRALS

The following state agencies were advised of the 2019 Planning Proposal and invited to make comment:

- NSW Department of Planning Industry & Environment
- NSW Rural Fire Service
- State Emergency Service
- Roads & Maritime Services
- Sydney Water

INTERNAL REFERRALS

Referrals were sent to the following Northern Beaches Council Business Units requesting advice:

- Biodiversity
- Strategic and Place
- Traffic
- Bushfire
- Flooding
- Landscape
- Parks
- Coast and Catchments

The comments received from Council's internal technical experts were mostly critical of the 2019 Planning Proposal and the revised VPA offer in respect to the quality of the submission and the

impacts of any proposed rezoning of the site to permit the proposed four (4) storey residential flat building development public open space and car park purposes.

CONSULTATION

Nil

TIMING

Nil

FINANCIAL IMPACT

Should the 2019 Planning Proposal proceed and subsequently be finalised, it would have the following financial impacts:

- a) The construction of the proposed residential flat building development public open space and car parking area would create jobs with associated financial benefits to the local community.
- b) There is the potential for adverse economic effects to result as a consequence of flooding (e.g. associated with the potential need for future residents to shelter in place during a flood, or flood impacts upstream or downstream of the site as part of any future development), however this is difficult to determine without further and more detailed flooding information.
- c) There is the potential for adverse economic effects to result as a consequence of bushfire to both the proposed residential flat building development and the open space areas.
- d) Any future development consent would require a contribution in accordance with the *Warriewood Valley Development Contributions Plan* to contribute to the provision of infrastructure and services required to support the development and residents in Warriewood Valley”.
- e) The Council’s Development Contributions Committee resolved at its meeting on 15 October 2019 in respect to the original VPA offer from Henroth for the 2019 Planning Proposal as follows:

“A. *Does not support the offer to enable commencement of negation to enter into a Voluntary Planning Agreement at 6 Jacksons Road, Warriewood having regard for:*

- i. *Negative environmental impacts associated within impacts on identified EC’s and threatened fauna on the subject site*
- ii. *Negative financial impacts on the Warriewood Valley Contributions Plan as a result of the proposed offsetting of development contributions in the Warriewood Plan*
- iii. *The benefit of potential new sports fields not being outweighed by negative environmental and financial impacts.*

B. *Request that the Applicant be advised of the Committee’s decision.”*

By letter dated 8 November 2019 Henroth submitted a revised VPA offer to Council removing the request that all costs associated with the proposed sports playing fields works be offset against any Section 94 levies that would otherwise be payable to the Council. The revised VPA offer includes (in addition to the previously offered new playing fields) the applicant constructing (in partnership with Council) a new 130-140 space at grade public car park on the Council’s existing public open space zoned land between the Boondah Road sports fields and Pittwater Road and upgrading the existing car parking area at the Heather Nelson Centre. The revised VPA offer also includes providing funding for the rehabilitation of EEC’s in the local area including sections of the Narrabeen Creek Line Corridor.

Council's Manager, Transport Network has provided the following comments on the revised VPA offer:

"I have reviewed the updated planning proposal and any car parking requirements for the proposed sport fields needs to be identified through undertaking a parking accumulation and demand study on the existing adjoining playing fields. There is no study/evidence provided on the need of additional parking spaces for the sport fields."

It is agreed that the provision of additional car parking close to the B-line would be beneficial for public. The delivery of the additional parking spaces should not be at the expense of the community open space when there is a viable alternative where this can be provided at the existing B-line car park through construction of additional levels on the existing structure that has been engineered to take an additional 2 levels to what was built. It is recommended that the TfNSW to be approached for the provision of additional parking spaces at the existing B-line Carpark as part of the VPA. This will eliminate the adverse impact resulting from the additional access on Pittwater Road and Boondah Road."

Furthermore, Council's Park Assets and Landscape Section have provided comments on the revised VPA offer as follows:

"Parks Assets review of revised VPA

The revised VPA proposal, with the addition of carparking that replaces existing recreational open space is not supported by Parks Assets, as the scheme reduces available recreational open space. The reduction of public open space, within a LGA that has identified the existence of insufficient public open space to cater for the recreational needs of its residents does not provide a public benefit.

The deficiency in recreational open space is identified in numerous Council reports, including:

- *Draft Local Strategic Planning Statement 2019.*
 - *Priority 6: High quality open space for recreation, predicts a 40 hectare shortfall of land for open space and sport by 2031. Reference within the Draft Local Strategic Planning Statement identifies the need for innovative solutions to address this shortfall. The revised VPA scheme does not provide any proposals to replace the loss of the open space through other solutions.*
- *Pittwater Public Space and Recreation Strategy 2014.*
 - *A key component of the strategy is to upgrade and expand existing public space, sport and recreation networks. The revised VPA scheme reduces land available for open space recreation.*
 - *The strategy identifies the community's wish to protect, conserve and enhance the natural environment. The revised scheme requires removal of numerous mature trees of streetscape amenity value.*
- *Warriewood Valley Contribution Plan.*
 - *The proposed additional dwellings results in an increase in the overall demand for open space, by area, within the Warriewood Valley Release Area, and the revised VPA proposal fails to provide for the additional area of open space.*

The revised VPA scheme as shown on the plans does not appear to impact upon the Netball courts boundaries. Conversely the plans do not show the extent of the courts on the plans to verify this.

A key component of Priority 6 of the Draft Local Strategic Planning Statement is the conversion of single-use open space by creating multi-functional spaces to increase sport and recreation. The impact upon this opportunity has not been investigated against the proposed extent of the proposed carparking.

Landscape review of revised VPA

1. 6 Jacksons Road Warriewood:

The proposed new playing field at 6 Jacksons Road will result in the loss of the existing perimeter tree planting along the western boundary. This area is mapped under the Pittwater DCP as existing Swamp Oak Floodplain Forest Endangered Ecological Community (EEC).

The EEC provides a landscape amenity worthy of retention as a landscape buffer between the Warriewood Square property and the existing open space along Boondah Rd.

To satisfy clause B4.14 Development in the Vicinity of Wetlands, which includes land with Swamp Oak Forest, development shall not adversely impact on the wetlands, and to satisfy clause B4.22 Preservation of Trees and Bushland Vegetation, endangered ecological communities shall be protected.

The revised VPA proposal does not provide such protection and preservation of the EEC.

Additionally, clause C6.6 Interface to Warriewood Wetlands or non-residential and commercial/industrial development, requires that landscape buffer zones shall separate incompatible land uses. In this instance it is reasonable to suggest that Warriewood Square is incompatible with the proposed active recreation open space, such that a landscape buffer should be maintained if existing or provided otherwise.

In its current form, the revised VPA proposal is not supported. To support the provision of playing fields in this location, a landscape buffer, possibly in the order of 10 metres wide would need to be provided, with the buffer consisting of the preservation of existing EEC trees.

2. 4 Jacksons Road Warriewood:

The proposed carparking over existing open space is not supported due to the loss of valuable open space and the loss of vegetation that provides a streetscape amenity and a visual buffer between Pittwater Road and the recreational open space upon this land."

The Development Contributions Committee considered the amended VPA offer at an extraordinary meeting on 27 November 2019. At this meeting the Committee resolved:

That the Development Contributions Committee:

- 1. Do not support the amended offer to enter into a VPA as it has not demonstrated appropriate public benefit for the following reasons:*
 - A. The proposal will result in a net loss of open space.*
 - B. The adverse ecological impacts are unlikely to be offset within the local government area.*
 - C. The provision of additional commuter parking spaces has already been planned within the existing commuter car park and will be delivered by TfNSW when required.*

- f) Should the 2019 Planning Proposal proceed and subsequently be finalised, without an adequate funding mechanism identified for any additional traffic and other infrastructure required, there is a risk that Council would have to fund the required infrastructure.
- g) The proposed flood storage solution on the reconstructed Boondah Road Public Reserve and the new synthetic sports fields at 6 Jacksons Road is likely to impose a financial burden on Council for maintenance.
- h) The proposed carpark on the Boondah Road Public Reserve and Pittwater Road is likely to impose a financial burden on Council for maintenance.

SOCIAL IMPACT

The 2019 Planning Proposal is inconsistent with the following:

- a) The *Warriewood Valley Strategic Review Addendum Report* (December 2017), *Pittwater Public Space and Recreation Strategy 2014* and the *Warriewood Valley Development Contributions Plan* identifies 10 and 12 Boondah Road in conjunction with neighbouring properties as required for open space purposes as it is in close proximity to existing sports fields, is flood affected land and will provide for the open space needs of the new population of the Warriewood Valley Urban Release Area.

The 2019 Planning Proposal will not only increase the demand for active and passive open space, but it will reduce the opportunities for additional required open space to be provided within the broader Warriewood Valley Urban Release Area. It is considered that the development of the proposed synthetic surface sports fields on 6 Jacksons Road is not supported due to the significant environmental attributes and site constraints of this land.

The proposed carpark will reduce the amount of existing public open space land in the Warriewood Valley available to the local community for recreation purposes.

- b) There is the potential for adverse social impacts to result as a consequence of flooding.
- c) There is the potential for adverse social impacts to result as a consequence of bush fires.

ENVIRONMENTAL IMPACT

It is considered that the adverse environmental impacts of the 2019 Planning Proposal will be significant. The 2019 Planning Proposal is inconsistent with the following Local Planning Directions:

- 1.2 Rural Zones
- 2.1 Environment Protection Zones
- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection

The 2019 Planning Proposal documentation fails to demonstrate that the environmental impacts are acceptable, and Council's technical officers have raised the following areas of concern:

- Bushfire risk
- Flooding risk

- Significant adverse impact on biodiversity and wildlife connectivity value of the site and the surrounding locality including the Warriewood Wetlands. The site includes Endangered Ecological Communities (EEC) and threatened species and their habitats.
- Acid sulfate soils
- Soil stability, erosion, sediment, landslip assessment and subsidence
- Stormwater management
- Infrastructure servicing
- Adverse impacts on the Narrabeen Creek Line Corridor with earthworks and loss of existing and future vegetated riparian corridor to provide for the proposed new sports fields on 6 Jacksons Road and the reconstructed Boondah Road Public Open Space zoned land.

CONCLUSION

The 2019 Planning Proposal is not supported by DFP as it seeks to create development potential on the site comprising a four (4) storey residential flat building development and proposed open space areas (new synthetic surfaced sports fields) and a public car parking area which does not respond appropriately to the environmental attributes and physical constraints of the site.

The 2019 Planning Proposal is inconsistent with Council's local strategic planning directions for the Southern Buffer of the Warriewood Valley Urban Land Release Area as contained in the *Warriewood Valley Strategic Review Addendum Report* (December 2017); *Warriewood Valley Development Contributions Plan*; *Pittwater Public Space and Recreation Strategy 2014* as it will not only increase the demand for open space as a result of the 110-130 dwelling yield of the proposed residential flat building development (new population), but it will also reduce the opportunities for providing additional required open space on 10 and 12 Boondah Road, as well as neighbouring properties, consistent with the Council's Local Strategic Planning Framework for the Warriewood Valley Urban Land Release Area.

It is the opinion of DFP that should the 2019 Planning Proposal proceed and subsequently be finalised, it would be premature and create an undesirable precedent, particularly having regard to Council's adoption of Towards 2040 Draft LSPS at its Ordinary Council Meeting on 24 September 2019. The Towards 2040 Draft LSPS includes an undertaking to finalise a new Housing Strategy for the Northern Beaches LGA in the first half of 2020 consistent with Planning Priority 15 "*Housing supply, choice and affordability in the right locations*". The Towards 2040 Draft LSPS states in respect to "*Managing, growth and change*":

"The local housing strategy will investigate opportunities for changes to the planning controls to address housing needs, such as low levels of social housing and affordable housing, as well as provision of a diversity of housing types to cater for different demographic groups.

Planning proposals seeking changes to the planning controls for additional development capacity through spot rezoning must have strategic merit and site-specific merit. In some cases, these planning proposals may have merit and contribute to targets by unlocking previously identified capacity, particularly where they also have genuine broader public benefit, as well as achieving high quality planning and urban design outcomes.

Planning proposals that simply seek additional residential density above the current controls will have challenges in demonstrating their strategic merit as they are not necessary to achieve the housing targets and the strategic direction set out in Towards 2040. (see page 32)

Furthermore, once the Council and the Department have endorsed the final Towards 2040 LSPS, it is the Council's intention to prepare a new Northern Beaches LEP and DCP. It is noted that *Priority*

6 – *“High quality open space for recreation in the Towards 2040 Draft LSPS includes Action 6.5 “Investigate the provision of sports fields in new housing development areas including Warriewood Valley and potentially Ingleside”.*

In the circumstances, it is the opinion of DFP that the 2019 Planning Proposal with the revised VPA offer does not demonstrate sufficient strategic merit or site-specific merit and cannot be justified to proceed to a Gateway Determination having regard to all of the relevant considerations under the Department’s *Planning Proposals – A Guide to Preparing Planning Proposals* (December 2018). DFP recommends that Council reject the 2019 Planning Proposal for the reasons outlined in the recommendation of this Assessment Report.



SUBMISSIONS RECEIVED ONLINE (YOUR SAY) PEX2019/0003 Planning Proposal 10-12 Boondah Road and 6 Jacksons Road, Warriewood

1	I strongly oppose the development of more apartment blocks. The area is already overcrowded. More ovals/sporting fields/parks would be a better use if the space and would benefit the whole community. Warriewood is already overcrowded and the traffic of the streets will become worse. And a lot of people in high density housing always causes problems down the track!
2	Please, please do not reduce the amount of available on street parking available with this development. As a long term resident of the northern beaches I am increasingly distressed to see on street parking being diminished or set time limits (such as that proposed in the business area of Garden St) or the reduced street parking along Warriewood Rd and McPherson St with the Arcare retirement home and the two adjacent new residential developments. The amount of new developments in Warriewood Valley with little or no street parking to cover the number of residents and their visitors is ridiculous. My children have participated in sport in the Boondah Rd fields, and at certain times it can be challenging to find a park. With the introduction of more dwellings and the usual new curb and guttering and 'streetscape' modifications such as traffic flow modifications I am concerned that yet more on street parking will be lost. I understand that Warriewood Valley has room for more development and residential areas, I just wish Council would ensure that our current available street parking remains and without charge. Don't turn us into the Eastern Suburbs.
3	The glib "assurances" made in the proposal provide me with no confidence that endangered species' habitat and native bushland will not be destroyed by this development. The near-certainty that the developers will create insufficient parking spaces (less than 2 per unit) within the proposed building will mean that more cars are parked on the street. The attendant danger, particularly to old and young pedestrians and cyclists is obvious. If more population is the council's aim then the relatively open area of the community centre at 2 Jacksons Road could be redeveloped. This is adjacent to a B-Line bus stop. The community centre could be incorporated into the new development as a "gift" from the developer.
4	Residents of the northern beaches prefer to keep the green land and not drive past more housing. Keep the natural state of the land. We have too many houses that the roads can cater for, the last thing we need is more cars on the road.
5	No development way to many people here now . Roads can't cope now even worse after this
6	Please don't fill up that space with more tightly packed unit towers. We need to utilise the area for the playing fields
7	I DO NOT agree with any increase in height in this area. It does not fit in with the existing structures in the area. I assume the 15m height will be on top of the minimum height required for a structure in the flood plain, making it even worse. The offer of the sporting field is in an inadequate 'bribe'. It is a tiny area adjacent to an existing field that will do little to increase field capacity in the LGA. The increase in traffic at the intersections of Jacksons Rd, Warriewood Rd and Pittwater Rd are already under pressure, and this development will only exacerbate it.
8	This is so sad for the Wetlands, wildlife, and the local community who enjoy the little pure green spaces we have left. Traffic is already atrocious. There isn't even enough parking for the B-Line service, how can the Council get this so wrong all the time? Why are you doing this to our community? How do these people sleep at night knowing they keeping stretching the people who have invested their lives to live here. Put in some infrastructure around supporting the current population before injecting even more condensed living into our local area. We need a PCYC (or similar) up this end of the beaches for the huge teenage population that have nothing to do.

9	The infrastructure in Warriewood is over capacity and can not accommodate more medium - high density housing. The tragic has continued to become worse in recent years since the multi story development on noonday and Macpherson st and this will only add to the problem.
10	Please don't consider this proposal. As a resident of Warriewood, we experience the daily struggle with the overdevelopment in this area. We don't need more flats! We need schools and roads to keep Warriewood a liveable area. Considering the history of this area, community gardens to help all people, young and old, would be a great initiative for the proposed land if it cannot stay rural- what for environment prospects should be the best options. Thank you for considering our say, we trust you will look after our environment and liveability in Warriewood!
11	I totally oppose this planning proposal for all 4 proposed changes. A potential 4 storey, high density development is inappropriate for the area both in how it will look and the lack of supporting infrastructure in the surrounding areas. Our roads are already heavily congested, our public transport is inadequate for the current population and our schools are already running out of room to expand. The other high density units along Boondah do not provide adequate parking for residents and especially visitors - so few off street parking spaces for the number of units. The whole area is already overcrowded without adding even more high density housing. We don't need it and we don't want it.
12	When does common sense prevail? There is no need to extend building height to 15m. While I do not support the planning proposal at least keep consistency with the current landscape. Has council been to Warriewood lately? Infrastructure does not support the current landscape and population. Why are we increasing the issues instead of resolving them. Consider the current residents and those accessing schools in the area. Travelling to and from schools in the area is also challenging and interferes with students. When is enough, enough?
13	I oppose this submission, for these reasons: These buildings are too tall surrounding children's playing fields. I worry about my children's security due to the increased traffic this will bring in an already dangerously crowded area where small children often wander onto the road. I am also concerned about the increased visibility on children from residential windows - they cannot be protected from photography and other perverse invasive activity. I was under the impression from previous communications that this area would be dedicated to the community in terms of increasing sports fields capacity, with Futsal courts and netball courts. This increases the good health and closer community ties in our area and is highly preferable. It in turn decreases youth suicide, health problems and will help cater to Manly Warringah sports - for which we hold the highest number of football players in all of NSW. I HIGHLY object to any more road closures in the Warriewood valley. The past several years have seen so many roads closed (Garden st, Warriewood Rd, MacPherson st) that many residents feel council is not working for its residents but rather property developers. We need to uphold the green space for healthy lifestyle which the Northern Beaches is known for, not be the area in the newspapers which has the highest rate of chopping down trees in NSW.
14	I am opposed to this proposal. New playing fields do not compensate for over development in sensitive areas. I am very concerned about rezoning of land and amendments to our LEP provide increased density and height for developers profit. The residents of Northern Beaches Council area should not be expected to lose their natural and public amenity ie loss of and increased pressure on natural resources, increase on roads and other infrastructure, for private profit and at potential high future costs to ratepayers to deal with these stresses.
15	I am against further high rise apartments in the area. This does not fit in with the surrounding city scape.



16	Adding more playing fields at 6 Jackson Road, is a great initiative, But parking and general traffic in this area during the weekend is hectic already and the proposal is to increase this by building Units just round the corner, It also appears the transport impact report does not cover weekends. Would it possible to add a carpark to the southern end of the new sport field along Jackson road to alleviate the traffic on Boondah. (move sport field North to allow room) There are a lot of Units around this area already, It would be good to see some more developments that have housing.
17	The Northern Beaches doesn't need high rise apartment buildings. Don't turn this extraordinary area into another Gold Coast. The Council decisions and promise reversals have made locals cynical and angry. Who is the Applicant and who benefits from yet another privatisation and monetisation of public lands, like theft of Mona Vale Hospital grounds?
18	Build more schools. Roads are already to busy! Struggle to find Parking at the supermarket. Development has to stop!
19	Having read the traffic impact statement, and noting the 'generous' donation of land to Council, I submit that the Developer has little regard for the impact on the protected Warriewood wetlands and the Warriewood Valley suburb. The traffic impact statement brushes aside relevant issues concerning the area, particularly Boondah Road and Macpherson Street which, in real terms, is already a 'high' density area. The resultant traffic caused by this development cannot be serviced by any plans identified by the traffic impact statement. The playing fields bring not only large volume car parking, but bus parking as well. This has not been addressed. There will also be additional traffic problems caused by parents searching for car parking to collect children. It also does not mention the existing 400 units in the Oceanvale complex, nor the townhouse development due for completion shortly, in addition to the land currently for sale located on the Macpherson Street bridge. Additionally the Arcare complex will bring further traffic to this area. The area bounded by Pittwater, Jackson and Macpherson Streets already represents overdevelopment and this proposal should be referred to the State Government, particularly in light of the donation of land. I strongly oppose rezoning this land. I strongly oppose developers 'paying off' Council in order to push through plans which do not meet the criteria of sensible planning and environment and resident safety. The traffic on Pittwater Road is congested; accessing and using Pittwater Road during the weekend is impossible for local residents and further congestion on Jackson , Boondah and Macpherson Street will amplify this, which can only be solved by the Main Roads Department overhauling this area again. Ratepayers should not be expected to pay for infrastructure to accommodate a developer who clearly feels that there is no responsibility in development. This Planning Proposal is about causing further dangerous conditions on Boondah Street and all other roads leading to main arteries. It also will have an extreme negative impact on the Warriewood wetlands. I am appalled that the developer feels they can pay Council off to turn a blind eye with a 'donation' of land.



20	<p>I wholeheartedly disagree with this ridiculous overdevelopment of an area that is already OVER DEVELOPED and at capacity. The schools are full to the brim as are the roads. The figures that have been listed for car parking is underestimated. There is no way that a 1 bedroom unit will only have 1 car, a 2 bedroom, 2 cars and 3 bedrooms, 3 cars. We all know this doesn't happen and then where will these cars park? Also, have you tried getting out of Jackson Road/Pittwater Rd of a morning, it is a nightmare with traffic backed up. The same also happens on a weekend especially during soccer and netball season (April to August). And what about Powderworks Rd and Mona Vale Rd, not to mention Garden St. All are at standstill at various times of peak hour.</p> <p>Schools are at capacity and the NSW Government has just said that as of Term 4, all students in the catchment must attend that school. Narrabeen North PS and Narrabeen Sports High are at capacity, with promised money to upgrade from the State Government, nowhere to be seen... It will be years before it is upgraded and where will these kids attend school. We need land for additional schools, not land for more housing!</p> <p>Warriewood Valley is hugely overdeveloped and no thought by Northern Beaches Council to supply the area with additional infrastructure like schools, roads or additional playing fields has occurred. We do not need any more cheaply built (Opal towers anyone...), expensively sold off units under the guise of 'affordable housing' when none of it is affordable.</p> <p>The development is in a known flood area not to mention a nature corridor. They are proposing raising the road of Boondah, knowing it is a flood area. And with one road in and out, what about bush fire issues?</p> <p>I implore the council to reject this application and to buy back this piece of land for recreational, sporting and community gardens as well as for building additional school infrastructure. The residents of Warriewood do NOT need any more units and over development.</p>
21	<p>There is no info structure to support this development.</p> <p>The roads are over crowded the school are jammed to busting point.</p> <p>This development will impact the very way of life the northern beach's represents.</p>
22	<p>I do not think this development should go ahead. It will add too much pressure to the already clogged roads and infrastructure. Warriewood does not need any more high density living. I do not think that the proposed area should be rezoned.</p>
23	<p>Our schools and roads are already over full. We have lost our local hospital and much development has been done on the wetlands with various degrees of success and much interruption to our beautiful native wildlife.</p> <p>Please don't take away some of the last natural corridor we have.</p> <p>Narrabeen north Public School is immediately adjacent to this area and has far too many demountables as is. It simply won't cope with that many more residents.</p>
24	No please
25	<p>Too much increase on our utility and infrastructure. In particular the stormwater with the increased hard surface area putting an excessive amount to an already overloaded area!</p> <p>Boondah road is already busy enough being a back road. With the intended additional amount of dwellings adding a lot more cars to the streets causing more noise and disruption with traffic. Not to forget the amount of disruptions that will be caused by all the unforeseen factors like utilities and road upgrades etc to accommodate this development</p>
26	<p>Please find our objection to this ridiculous over development of the last known rural space in Warriewood which also happens to be a nature corridor. Developers are wanting to build 4 storey, 15m high apartments and add 120 apartments to an already over crowded area. Heaven knows how the schools, roads etc will cope! Kind regards, [REDACTED]</p>

27	I believe that this proposal should not go through as the area is already too congested. Narrabeen North Public School does not have room to accommodate the extra development, neither do the roads which are already gridlock. It would be devastating for the community of this were to go ahead. There is so little farm land left in Warriewood, which brings so much appeal.
28	I am against the proposal. We are an easy going relaxed coastal community. 15m high 4 storey apartment buildings are going to change the DNA of our community as we know it. We live in a truly unique place where people ride horses in our community and we are on the beaches and have all the needed amenities. Our local schools have kids pouring out of temporary buildings that have been in place for 20 years. I know school are not a local government problem but it's an example of how over crowded we already are. As it is, town house developments in Warriewood don't have enough car spaces, with most families having 2 car plus a teen driver making 3 cars, cars are all over the streets. Our roads can't cope with the current demands, I have taken 40mins sometimes to travel 2 kms.
29	<p>The addition of 150 more dwellings in this already over populated area is unacceptable. The impact on current infrastructure would be negative. The area is prone to flooding, or at least water retention for a considerable time following heavy rain. The area is close to the shops and transport but there is no guarantee that either facility will be utilised without the use of a car. Whilst returning by foot from Warriewood Square last Saturday morning round 11am, cars were queued up from the round about at the shops to Pittwater Rd waiting for the lights to change. The traffic coming on to Jackson's Rd at school drop off and pick up to,es blocks the two roundabouts and the exit of Oak St. There is no safe pedestrian passageway from the proposal to Warriewood Square or the Bline bus. Of more concern is the safe passage for children from the proposed development to Narrabeen North Public School or Narrabeen Sports High.</p> <p>Parking in the area is insufficient, especially on weekends when there is sport at Narrabeen Sports High, Jackson's Reserve and Boonah Reserve and the Indoor Sports Centre. There are also activities daily at the Nelson Heather Centre and Ted Jackson Centre. The parking is insufficient such that the local streets are clogged. The nose to kerb (although there is no kerb) on Boondah Rd, and the lack of footpaths is dangerous for pedestrians. The Bline car park at Rat Park is way too small. There is a need for an additional floor of parking now, however if this development goes ahead there could be a further need, especially in wet weather and later at night when more people drive to the car parking facility.</p> <p>I believe that Council has allowed the deterioration of this rural area as it is an 'eyesore' however more housing is not the answer. Kerb and guttering and water management are well overdue, and the road is in a terrible condition. There are so many community facilities that could provide a resource to the community as a whole, that could be developed here. The proposed use of the small parcel of land in Jackson's road is a waterway and if developed would be better utilised as a well maintained walkway access to Jackson's Rd.</p> <p>There is so much housing in the Warriewood Valley now and the local roads, especially Wakehurst Parkway are not coping. On Wednesday this week when the Wakehurst Parkway was closed, all traffic was diverted to Pittwater Rd and it was a nightmare at 4.30 when I was travelling from Brookvale to Narrabeen. Heaven knows what it was like in peak hour. Wakehurst Parkway cannot handle any more traffic. Driving around Narrabeen Bridge is always slow.</p>
30	I object strongly to the height being raised to 15 metres. Is this now going to be the start of NBC with it's Dee Why planning approach coming to Pittwater. Pittwater Council would not be allowing this increase in height.
31	<p>I walk the dog regularly past all these three sites and 6 Jackson road is all trees and bushland, a vital nature corridor connecting the wetlands.</p> <p>Although I like the idea of the extra playing fields this proposal will destroy all the native swamp oak trees and other native flora and fauna and should be left alone to form part of the wetlands corridor to safeguard the endangered bandicoots and other native species. We are so lucky that they are still living in this area and more habitat loss will just make it so much harder for our native species to survive.</p> <p>As for developing 10+12 Boondah Road, this may be possible, again only if the native flora and fauna are protected.</p> <p>As a condition of development this area should also be cat free and cats should not be allowed to live in this sensitive area</p>

32	No! No! No! You are killing our community. It's gridlock already. There is not enough infrastructure. Mona Vale Public School has just been told they need to cut 350 kids. The feel of a community is all but gone. There is barely any rural space left anyway. Draw a line in the sand and have some backbone. It's time to stop
33	I do a lot of work in and around Warriewood Square / Jackson's road as a driving instructor and the level of access in and out of Warriewood Square, Jackson's road through to both Pittwater Rd and Boondah Rd and Garden St is getting worse at peak times, afternoons and Saturday's. Adding further apartment population's from Boondah is a recipe for gridlock. This area should be maintained to preserve the precious wetlands, and for future access solutions to Warriewood Square and to the surrounding sporting fields. Why doesn't the Northern Beaches Council buy this land?
34	Dear Sirs. I own lot 251 being unit 66/ 16 Boondah Road Warriewood. I bought this unit on the understanding that no further medium/high density was to be approved for the area and that council had actually declined applications for additional developments in the area. Four storey units will be higher than anything in the area and will devalue the property, not to mention that it will look down onto my ground floor unit and potentially restrict sunlight as well. I respectfully advise that I am opposed to this proposal and that it should not be approved.
35	I don't agree to the new height limit it is out of character for this area as it is so close to sensitive wet lands and subject to flooding. Also the roads are struggling to support the huge increases in traffic. Please take note of all the hard work done in the strategic plan for our area, we thought this was our say though it seems you are dismissing all existing plans we made as a community.
36	Developments in the Warriewood area should allow for senior members of the community who want to still live at home in the area to be provided with an alternative to move into one level homes when they decide to downsize. Providing 1 and 2 bedroom units is not the answer. Provision should be made for at least 10% of new developments to allow for one level 'villa type homes' or at least some town houses for earlier retirees and make the area more liveable rather than having all three and four storey high-rise buildings. Developers seem to only care about maximising profits not the final impact on the community. Sadly, the little bit of suitable environment left for the fauna and flora is being eaten away by hungry developers. Birdlife and other fauna are desperate searching for other homes as they are overtaken by these high-rise units. Perhaps now we should make provision to grow trees on top of these developments. My comments with regards to the transport assessment and estimated impact on traffic; with due respect to the expertise, have the persons ever travelled along Warriewood at all over the last two years to realize the actual impact on traffic due to these developments have in the area? What about the potholes generated by the heavy equipment requiring road repairs using funds needed for other community development and services?
37	Please find attached a letter of support provided to the applicant by Manly Warringah Football Association.
38	Please don't overbuild our suburb. Four stories is too high. Too many people, too many cars. Jacksons and Boondah is already jammed with cars. I support extra playing fields but I don't believe that thin strip of land will contribute anything. Rezone to medium density. The schools are at capacity - there is no infrastructure to support such a large increase in Warriewood's population. How many more demountables can you fit on one site? (Mona Vale). Build more schools and improve road and public transport before you squeeze in extra residents.

39	Supporting this PP. People population is increasing, and housing is a huge priority across all suburbs of Sydney. People need homes to live and this is an ideal location. It is walking distance to amenities and public transport, i.e. shops, schools, transport including B1, beaches. Will keep some cars off the road. That's a great thing. Will suit young families as well as older residents. It is very much a fit for the area with Meritons already established units in the street, new aged care facility around the corner and is on the Warriewood Valley Release Area. It would be great to upzone the remaining two properties next to this PP to similarly increase housing stock and provide more dwellings in this ideal central location. Footpaths need to be constructed through to Jacksons Road, so people can walk safely to their destinations. Boondah Rd should ideally be redirected so it doesn't dissect playing fields, and also kerbed and gutted. All in all, a big tick for this PP.
40	Boondah Road is at capacity. The sporting fields and traffic between Jackson st and Boondah Road is already congested. Adding more units will make things worse. The building height worries me. Meriton has already tried to Extend their units at this location and it was not approved. So why would you approve a new lot of units. I am extremely opposed to more units.
41	I currently reside in Boondah Rd Warriewood and would like to express how central my home is to all neighbouring services. Within half kilometre of my residence, I have access to – Warriewood shopping Centre, Narrabeen Secondary School, Rat Park & facilities, including golf driving range and markets, Warriewood Cinema and surrounding businesses, Indoor and outdoor sports facilities and fields, Heather Nelson & Ted Blackwood facilities, B Line buses and regular bus services, Warriewood wetland tracks! occasionally walk to Narrabeen Lakes and the rock pool at North Narrabeen Beach for a swim, which is less than 1 kilometre away. Given that Boondah Rd is centrally located and within close proximity to all of the above facilities and services, I can easily access all of them by foot. I rarely use my car. By observing the amount of foot traffic up and down Boondah Rd, I suspect residents in the Meriton complex and surrounding residences do the same. I support the proposed residential development on the site for the above reasons of central location, convenience and reducing car traffic, which all future new residents could similarly enjoy. At present, the proposed site is unsightly and overgrown with lantana and scrub. This planning proposal should be given the green light to ease the growing population burden. As an aside, ideally, the Southern Buffer should be developed as a whole.
42	I support the above Planning Proposal. It is 1). Consistent with the local character with Meriton's next door and Warriewood Square behind. 2). Perfect block near B1, shops, schools lake and beaches. No need for car. 3). The owners have been more than patient with Council in waiting for appropriate zoning. 4). We need employment and the removing private lands also need to be rezoned.
43	Being a resident who does not drive a car I believe Boondah Road Warriewood is the perfect site for both residential and or commercial development. It is only a very short walk to shopping, schools and very importantly on the doorstep of direct public transport on the main road. It would be a crazy situation in which council would prefer to have development further away from such vital facilities which would cause further traffic congestion on our roads. I am in full support of the proposal for residential development on 10-12 Boondah Road.
44	The Southern Buffer has been not been maintained and updated for many years. The proposed Development at 10-12 Boondah Road is the first step to complete the Southern Buffer. It is also a fantastic opportunity for the council to acquire land for the Community. I believe this to be an opportunity for council to upgrade the whole Southern Buffer. Boondah Road needs to be curbed and guttered, the playing fields need to be reconfigured and the Road re routed so as not to divided the playing fields; at present it is a danger to pedestrians and users of the fields. With the already increased population and the soon to be redeveloped Primary and High School, council need to use this opportunity to upgrade the infrastructure including roads, shops and housing to accommodate our area. The Southern Buffer is a perfect location as it is in walking distance to both schools, the shopping centre and the B Line. This Planning proposal is the first step forward to improve and utilised this area.



45	<p>I support this fantastic Planning Proposal based on the following:</p> <p>Infill urban development opportunity - The redevelopment of the site represents an opportunity to provide housing opportunities in a location that is well located to access existing retail and commercial facilities. The concept demonstrates the opportunities available to augment the existing open space areas immediately adjacent to the site to increase the provision of active open space via their Voluntary Planning Agreement (VPA) offer.</p> <p>Consistency with the adjoining development - The site is an extension to the adjoining residential development in the Warriewood Valley urban release area to the north. The concept enhances the open space network and retains and enhances creekline corridors and buffers to the Warriewood wetlands. The Planning Proposal represents an opportunity to deliver a compatible urban infill providing additional housing opportunities which will be well located to employment, services, education, recreation and transport facilities. The proposal will fit well with the existing developments to the north (Meritons) and south (Warriewood Square) of the site.</p> <p>Consistency with the planning framework - The Planning Proposal is consistent with the Greater Sydney Region Plan, the North District Plan, the Pittwater Local Planning Strategy 2011 and the Warriewood Valley Planning Framework 2010, and the Warriewood Valley Strategic Review 2013 and 2018 Addendum.</p> <p>Development constraints - The Planning Proposal is supported by an analysis of the opportunities and constraints of the site in particular the urban design, environmental, natural hazard and transport context of the site. The site is identified as bushfire prone land and subject to flooding. The concept has been designed having regard to these constraints. Similarly, the concept has had regard to environmental constraints and accommodates riparian corridors and buffers to environmentally sensitive lands.</p> <p>Transport and Connectivity Improvements - The Planning Proposal has the potential to provide accommodation that is well located within a 10 minutes' walk to bus transit provided by B-Line.</p> <p>Summary - I ask that the Northern Beaches Council resolve to support the rezoning as detailed in the Planning Proposal for 10-12 Boondah Road and 6 Jackson Road Warriewood and then forward the Planning Proposal for a Gateway Determination to the Department of Planning with the following outcomes: Amend the Land Zoning Map to show the site as part R3 Medium Density Residential, and part RE1 Public Recreation zone in accordance with the configuration shown on their proposed Zoning Plan; Impose a building height of 15m on the Height of Buildings Map in accordance with the configuration shown on the attached proposed Height of Buildings Plan; Delete the land from the Minimum Lot Size map; and Amend Clause 6.1(3) of the Pittwater Local Environmental Plan (PLEP) 2013 to reflect the development potential of the land as a sector within the Warriewood Release Area with a yield of 110 to 130 dwellings. Thank you, [REDACTED]</p>
46	Please see attached letter of objection.
47	Please see attached letter of submission.
48	Please see attached submission Letter.



Attachment to (37)



Attachment to submission ID 20418 [REDACTED]

Attachment to 40



Manly Warringah Football Association
101 South Creek Rd
Cromer NSW 2099
+61 2 9982 6228
admin@mwfa.com.au
www.mwfa.com.au

9 September 2019

MWFA letter of support for new sportsfields in Narrabeen

Attention: Northern Beaches Council

To whom it may concern,

I am writing this letter in relation to a proposal to create new sportsfields at Boondah Reserve as part of a broader plan for a development at 10-12 Boondah Rd and 6 Jacksons Rd, Narrabeen.

The Manly Warringah Football Association (MWFA) controls and administers football on the Northern Beaches and works closely with Northern Beaches Council in relation to implementing a Sportsfield Strategy that states the need to increase the number of sports fields on the Northern Beaches.

The MWFA is the largest football association in NSW with 18,500 grassroots players and 500 elite players, and we are strong advocates of increasing sportsfields for football players and teams. We deal with the Northern Beaches Council Parks Department in a consistent and positive way towards implementing this strategy.

My letter addresses the component of the proposal that caters for the development of the area that will greatly increase the number of sportsfields in the area. The suggested changes, are a tremendous positive step forward increasing capacity in an area of the Northern Beaches that has stretched capacity.

I offer no commentary or opinion on the planning and development component of the proposal.

Kind Regards



David Mason
MWFA CEO

MANLY WARRINGAH FOOTBALL ASSOCIATION: ABN 96 869 552 850

Attachment to 46

23 Sydney Road
Warriewood NSW 2102

General Manager
Northern Beaches Council

By online lodgement:

**Objection to
Planning Proposal for 10-12 Boondah Road and 6 Jacksons Road, Warriewood
Ref: PEX2019/0003**

Dear Sir,

I wish to strongly object to the above planning proposal.

Without going into the pros and cons of the proposed rezoning, and the many undesirable impacts that would arise from the proposed over-development of this site (and the shortcomings, assumptions and unsupported claims in the accompanying documents), my objections are based on the following broad concerns.

Adverse Impact of "Spot Rezonings"

Spot rezonings such as this proposal seriously damage and devalue the planning process, and erode the community's faith in sound and consultative land use planning and development control.

The community and Council have gone through a plan making process, an often extended exercise involving significant community engagement, to devise an LEP and supporting documents that express the community's agreed intention for the land use(s), development intensity and the character of an area. To have the efforts and express wishes of the many potentially annulled and largely reversed at the behest of a few individuals is to render the plan making process and those who contributed to it almost meaningless. In essence spot rezonings represent planning and land use change by incrementalism, and opportunism, rather than by consensus.

The community's faith in planning and development control is then further eroded when, after an unsolicited or opportunistic rezoning has gone ahead, the subsequent development is progressively amended – through the DA modification process (and even via post-completion "approval" of as-built non-complying elements) – to push or exceed the boundaries of the development consent or DCP.

In essence what this rezoning application for 10-12 Boondah Road and 6 Jacksons Road at Warriewood is seeking is for Council to ignore or over-ride that stated wishes of the community, and its own LEP, by changing the rules (zoning) for the personal benefit a few landholders/developers but at the detriment of the local and wider community and the site's environment (physical and visual). The proponent's arguments, and their reports, in favour of the rezoning are subjective, unsubstantiated and in some cases spurious or irrelevant while the costs to the community and the locality are downplayed or ignored entirely.

Additionally Council, and the assessing officer(s), should feel under no compulsion to approve any part of this unsolicited and opportunistic rezoning application – which is, in essence, an ambit claim. Importantly, Council should not feel obliged to negotiate with the proponent to “trade” any elements of the application.

It is my submission that the proposal should be rejected in its entirety, and that Council should refuse every aspect of the proposal that is non-compliant with the current land use zoning and DCP requirements.

VPA Offer of Little Real Benefit

The offer of entering into a Voluntary Planning Agreement (VPA) to deliver the proposed additional playing fields (one full size field, which is not physically possible in the area available and with the field shown in the planning proposal being placed hard against the Warriewood Square internal road with no safe “run-off” curtilage, and one mini-field) is of little real, if any, benefit to Council – as the requested trade-off is the proponent’s release from any Section 94 contribution obligations “that would otherwise be levied on our proposed development”.

So the effective savings to Council (compared with undertaking these works in-house or by contract) would only be in terms of the project management costs for such works. I would argue that these relatively minor savings would be “eaten up” in the time/cost of Council staff having to provide quality control and monitoring of the works/delivery of this VPA. Additionally VPA’s have very often proved to be “a challenge” for the Council involved – as developers attempt to scale back, modify, inordinately delay, or simply under-deliver or avoid their obligations once their development objectives have been achieved (and the companies concerned have sometimes even been dissolved) – leaving the Council, and community, out-of-pocket and disadvantaged.

Vegetation Clearing Removal

Despite being impacted by weeds, and in parts stormwater flows, I object to the proposed removal of the 50-60 metre wide band of largely native vegetation (trees and understorey) now running along the western side of the Boondah field (east of Warriewood Square) as well as the likely impacts on the more narrow band of riparian vegetation flanking Narrabeen Creek through the proposed development area.

These areas of vegetation play a valuable role in screening the excessive bulk and built form of Warriewood Square (the multi-storey carpark and other developments) from the Boondah playing fields, and from Pittwater Road and other areas to the east. These areas of bush are also connected to the larger Warriewood Wetlands, which enhances their habitat and biodiversity values (this is not an isolated remnant).

Clearing and removal of these areas of vegetation would have unacceptable impacts in terms of the locality’s visual quality and amenity (particularly the Boondah playing fields), local habitat and biodiversity values, and water quality management/improvement functions.

There are many other issues and problems with this planning proposal. However I do not have the time to address them all. Suffice to say “spot rezonings” are a contradiction to any open and orderly planning process that is intended to represent all interests, VPAs can be



fraught and of little real value to a Council or community, and the proposal as it now stands would have a multitude of adverse impacts on the built, visual and environmental values of its locality – and should be rejected entirely.

Yours sincerely,

A black rectangular redaction box covering a handwritten signature.

A black rectangular redaction box covering a printed name.

29 September, 2019

Attachment to (47)

50 Huka Avenue
Elanora Heights NSW 2106General Manager
Northern Beaches CouncilBy online lodgement:

**Objection to
Planning Proposal for 10-12 Boondah Road and 6 Jacksons Road, Warriewood
Ref: PEX2019/0003**

Dear Sir,

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Without going into the pros and cons of the proposed rezoning, and the many undesirable impacts that would arise from the proposed over-development of this site (and the shortcomings, assumptions and unsupported claims in the accompanying documents), my objections are based on the following broad concerns.

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Spot rezonings such as this proposal seriously damage and devalue the planning process, and erode the community's faith in sound and consultative land use planning and development control.

The community and Council have gone through a plan making process, an often extended exercise involving significant community engagement, to devise an LEP and supporting documents that express the community's agreed intention for the land use(s), development intensity and the character of an area. To have the efforts and express wishes of the many potentially annulled and largely reversed at the behest of a few individuals is to render the plan making process and those who contributed to it almost meaningless. In essence spot rezonings represent planning and land use change by incrementalism, and opportunism, rather than by consensus.

The community's faith in planning and development control is then further eroded when, after an unsolicited or opportunistic rezoning has gone ahead, the subsequent development is progressively amended – through the DA modification process (and even via post-completion "approval" of as-built non-complying elements) – to push or exceed the boundaries of the development consent or DCP.

In essence what this rezoning application for 10-12 Boondah Road and 6 Jacksons Road at Warriewood is seeking is for Council to ignore or over-ride that stated wishes of the community, and its own LEP, by changing the rules (zoning) for the personal benefit of a few landholders/developers but at the detriment of the local and wider community and the site's environment (physical and visual). The proponent's arguments, and their reports, in favour of the rezoning are subjective, unsubstantiated and in some cases spurious or irrelevant while the costs to the community and the locality are downplayed or ignored entirely.

Additionally Council, and the assessing officer(s), should feel under no compulsion to approve any part of this unsolicited and opportunistic rezoning application – which is, in essence, an ambit claim. Importantly, Council should not feel obliged to negotiate with the proponent to “trade” any elements of the application.

It is my submission that the proposal should be rejected in its entirety, and that Council should refuse every aspect of the proposal that is non-compliant with the current land use zoning and DCP requirements.

VPA Offer of Little Real Benefit

The offer of entering into a Voluntary Planning Agreement (VPA) to deliver the proposed additional playing fields (one full size field, which is not physically possible in the area available and with the field shown in the planning proposal being placed hard against the Warriewood Square internal road with no safe “run-off” curtilage, and one mini-field) is of little real, if any, benefit to Council – as the requested trade-off is the proponent’s release from any Section 94 contribution obligations “that would otherwise be levied on our proposed development”.

So the effective savings to Council (compared with undertaking these works in-house or by contract) would only be in terms of the project management costs for such works. I would argue that these relatively minor savings would be “eaten up” in the time/cost of Council staff having to provide quality control and monitoring of the works/delivery of this VPA. Additionally VPA’s have very often proved to be “a challenge” for the Council involved – as developers attempt to scale back, modify, inordinately delay, or simply under-deliver or avoid their obligations once their development objectives have been achieved (and the companies concerned have sometimes even been dissolved) – leaving the Council, and community, out-of-pocket and disadvantaged.

Vegetation Clearing / Removal

Despite being impacted by weeds, and in parts stormwater flows, I object to the proposed removal of the 50-60 metre wide band of largely native vegetation (trees and understorey) now running along the western side of the Boondah field (east of Warriewood Square) as well as the likely impacts on the more narrow band of riparian vegetation flanking Narrabeen Creek through the proposed development area.

These areas of vegetation play a valuable role in screening the excessive bulk and built form of Warriewood Square (the multi-storey carpark and other developments) from the Boondah playing fields, and from Pittwater Road and other areas to the east. These areas of bush are also connected to the larger Warriewood Wetlands, which enhances their habitat and biodiversity values (this is not an isolated remnant).

Clearing and removal of these areas of vegetation would have unacceptable impacts in terms of the locality’s visual quality and amenity (particularly the Boondah playing fields), local habitat and biodiversity values, and water quality management/improvement functions.

There are many other issues and problems with this planning proposal. However I do not have the time to address them all. Suffice to say “spot rezonings” are a contradiction to any open and orderly planning process that is intended to represent all interests, VPAs can be



fraught and of little real value to a Council or community, and the proposal as it now stands would have a multitude of adverse impacts on the built, visual and environmental values of its locality – and should be rejected entirely.

Yours sincerely,

[Redacted signature]

Janine Gibbs

29 September, 2019

Attachment to 48

59 Iluka Avenue
Clarendon Heights NSW 2111

General Manager
Northern Beaches Council

By online lodgement:

**Objection to
Planning Proposal for 10-12 Boondah Road and 6 Jacksons Road, Warriewood
Ref: PEX2019/0003**

Dear Sir,

I wish to strongly object to the above planning proposal.

Without going into the pros and cons of the proposed rezoning, and the many undesirable impacts that would arise from the proposed over-development of this site (and the shortcomings, assumptions and unsupported claims in the accompanying documents), my objections are based on the following broad concerns.

Adverse Impact of "Spot Rezonings"

Spot rezonings such as this proposal seriously damage and devalue the planning process, and erode the community's faith in sound and consultative land use planning and development control.

The community and Council have gone through a plan making process, an often extended exercise involving significant community engagement, to devise an LEP and supporting documents that express the community's agreed intention for the land use(s), development intensity and the character of an area. To have the efforts and express wishes of the many potentially annulled and largely reversed at the behest of a few individuals is to render the plan making process and those who contributed to it almost meaningless. In essence spot rezonings represent planning and land use change by incrementalism, and opportunism, rather than by consensus.

The community's faith in planning and development control is then further eroded when, after an unsolicited or opportunistic rezoning has gone ahead, the subsequent development is progressively amended – through the DA modification process (and even via post-completion "approval" of as-built non-complying elements) – to push or exceed the boundaries of the development consent or DCP.

In essence what this rezoning application for 10-12 Boondah Road and 6 Jacksons Road at Warriewood is seeking is for Council to ignore or over-ride that stated wishes of the community, and its own LEP, by changing the rules (zoning) for the personal benefit a few landholders/developers but at the detriment of the local and wider community and the site's environment (physical and visual). The proponent's arguments, and their reports, in favour of the rezoning are subjective, unsubstantiated and in some cases spurious or irrelevant while the costs to the community and the locality are downplayed or ignored entirely.

Additionally Council, and the assessing officer(s), should feel under no compulsion to approve any part of this unsolicited and opportunistic rezoning application – which is, in essence, an ambit claim. Importantly, Council should not feel obliged to negotiate with the proponent to “trade” any elements of the application.

It is my submission that the proposal should be rejected in its entirety, and that Council should refuse every aspect of the proposal that is non-compliant with the current land use zoning and DCP requirements.

VPA Offer of Little Real Benefit

The offer of entering into a Voluntary Planning Agreement (VPA) to deliver the proposed additional playing fields (one full size field, which is not physically possible in the area available and with the field shown in the planning proposal being placed hard against the Warriewood Square internal road with no safe “run-off” curtilage, and one mini-field) is of little real, if any, benefit to Council – as the requested trade-off is the proponent’s release from any Section 94 contribution obligations “that would otherwise be levied on our proposed development”.

So the effective savings to Council (compared with undertaking these works in-house or by contract) would only be in terms of the project management costs for such works. I would argue that these relatively minor savings would be “eaten up” in the time/cost of Council staff having to provide quality control and monitoring of the works/delivery of this VPA. Additionally VPA’s have very often proved to be “a challenge” for the Council involved – as developers attempt to scale back, modify, inordinately delay, or simply under-deliver or avoid their obligations once their development objectives have been achieved (and the companies concerned have sometimes even been dissolved) – leaving the Council, and community, out-of-pocket and disadvantaged.

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There are many other issues and problems with this planning proposal. However I do not have the time to address them all. Suffice to say “spot rezonings” are a contradiction to any open and orderly planning process that is intended to represent all interests, VPAs can be



fraught and of little real value to a Council or community, and the proposal as it now stands would have a multitude of adverse impacts on the built, visual and environmental values of its locality – and should be rejected entirely.

Yours sincerely,

A handwritten signature in black ink, which appears to be "Andrew Ginn".

Andrew Ginn

29 September, 2019



Submissions via post/email

Paula Moretti

From: [REDACTED]
Sent: Wednesday, 25 September 2019 3:27 PM
To: Council Mailbox
Subject: Submission for PEX2019/0003 10-12 Boondah Road Warriewood.
Categories: NF

Listed below are my objections to the above proposals.

If approval is granted I TOTALLY object to height rise bldgs above 3-storeys in the WV.

We would like to maintain a low-rise valley & not morph into another Dee Why to satisfy developers' greed for higher n higher!

I would prefer to see more open & green space such as much needed extension of the existing sporting fields in the Sthn end.

There needs to be much needed upgrade of the extremely dangerous road that Boondah Rd has become. After the death of a girl & another accident waiting to happen with motor bikes & utes hooning along there, there needs to be calming implements installed certainly before more people coming into the mix! Curb, guttering & at least a footpath would be helpful & make it a SAFE passage for pedestrians!..not a country road in the middle of nowhere!!

I like to be able to get to the wonderful BLine bus into the City in one piece!!

I would like to see heaps of trees & landscaping, such as in Meriton, to reflect the Wetlands & Creek precinct & would certainly hope there would NOT be any encroachment on the Wetlands area!

Thanking you & on behalf of my 3 neighbours in [REDACTED]

Kind regards
[REDACTED]

Sent from my iPhone



Scanned 27-09-2019



Northern Beaches Council
1 Park Street
Mona Vale
NSW 2103

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

20 September 2019

Your ref: PEX2019/0003

Planning Proposal: 10-12 Boondah Road

Dear Sir/Madam

We refer your letter 10 September 2019, we object to this proposal on the following basis;

1. We object to rezoning the land, also that this proposal is not medium density but in fact High density in aspect at least.
2. We object to the building height of 15 metres, even Meriton could not achieve this desired height in adjacent building P at 14/16/18 Boondah Road.
3. The lot size amendment is not relevant within the above objections.
4. Re amendment of clause 6.1(3), this is totally unacceptable, excluding the key fact the resultant precedent would be catastrophic.

Regarding the proposals, the immediate association of the gift of land to Council, sadly for Council, this so called gift is immediately construed as a bribe to achieve totally unacceptable planning intentions. On the other hand we salute Council for their transparency in making this bribe clear for all to see.

Yours faithfully

[REDACTED]

[REDACTED]

[REDACTED]





Warriewood Residents Association Incorporated

25 Dingo Place
BAYVIEW NSW 2104

29 September 2019

Mr. Ray Brownlee
Chief Executive Officer
Northern Beaches Council
PO Box 882
MONA VALE NSW 1660

Attention: Phil Jemison

**PEX2019/0003 Planning Proposal 10-12 Boondah Road and 6 Jacksons Road,
Warriewood**

Dear Mr. Brownlee,

The Warriewood Residents Association participated in the 2013 Strategic Review of the Warriewood Valley. It remains our policy that developments in the confines of the Warriewood Land Release Area should comply with the outcomes of the Review. Spot rezoning wherever it occurs erodes trust in the planning system and therefore should not occur.

This proposal does not comply with both the physical and environmental outcomes of the review. The Strategic Review designated the area of the Southern Buffer as RU2 for the dual reasons that the overland flow from a flooding Narrabeen Creek was necessary to continue to nourish the adjoining wetlands, and allow time to develop a holistic approach to the complete area. This proposal appears to contradict these aims.

The planning Proposal seeks to:

Rezone from RU2 to R3.

As stated above we believe that land owners and the Warriewood community had an opportunity for their say during the extensive consultation conducted by council prior to the outcome of the 2013 Strategic Review.

At that time there was no proposal for rezoning, and the Warriewood Strategic Review kept the area RU2. As such the land in the southern Buffer should remain as designated RU2 until another strategic review determines otherwise. Should this

proposal proceed it will set in train a domino effect creating claims from other adjoining land owners. Because of the domino effect the impacts of this spot rezoning proposal must be considered within a holistic view and not in isolation. This is because with the ever increasing dwelling numbers in the Warriewood Valley there needs to be community consensus on what the Southern Buffer should be used for.

Increase the height to 15 m.

Pittwater Council decided, against the WRA's wishes, to amend the 2 storey limit from 2 to 3 storeys at 12.5 m back from the road frontage after the Strategic Review. There was however total agreement that 4 storeys were not suitable for the Warriewood Valley and the Warriewood Valley Master Plan reflects this. Therefore, 3 storeys are not a pass card for 4 storey blocks of apartments.

Minimum Lot size of 1 ha deleted.

This destroys the intent of the RU2 zoning and therefore should not be agreed to because it will further erode the outcome of the Strategic Review.

Increase the dwelling yield to 120 dwellings.

This destroys the intent of the RU2 zoning and therefore should not be agreed to because it will further erode the outcome of the Strategic Review.

Land swap offer to council.

When this is done and a fair exchange can be demonstrated, and it will not contravene the intent of the planning system and it will also enhance the desired outcomes of the planning scheme it is a good idea.

The destruction of the creek line vegetation, a key feature of the Warriewood Valley Master Plan, should not be agreed to.

The idea to trade off creek and mature vegetation for a greater density may seem a good idea to some, however environmental consequences must be considered with great care as were the environmental consequences of preserving the Warriewood Wetlands during the design of the Warriewood Valley Master Plan. The tree lined creek corridors are the one feature that makes the Warriewood Valley such a fine example of urban development and this must not be allowed to be destroyed here.

Further, there does not seem to be consideration of the downstream consequences of hard channeling the overland flow from Narrabeen Creek into the already stressed pipes under Jacksons Road and the Mullet Creek area adjacent to the commercial areas in Garden Street.

The Warriewood Residents Association would urge the Northern Beaches Council to resolve the use of the Southern Buffer in a holistic way acceptable to all stakeholders involved.

The Warriewood Residents Association is always happy to discuss this letter with council if there is any further information required.



Yours faithfully,

[Redacted signature]

[Redacted name]
President WRA

cc. Members of WRA, Hon. Rob Stokes MP, All Norther Beaches Councillors, PCA



NARRABEEN FOOTBALL CLUB

A section of Narrabeen Youth Club Inc.

Registered Charitable Organisation YO4364-38 ABN 91 603 223 428

www.narrabeenfc.com.au



26th September 2019

To Whom It May Concern:

Narrabeen Football Club supports the proposed combining of the land at 6 Jacksons Rd Warriewood with the existing Boondah Playing fields for the purposes of creating much needed additional playing space and amenities.

This additional playing space would not only greatly benefit Narrabeen Football Club but would also benefit all other Manly Warringah Football Association clubs.

Narrabeen FC member numbers have nearly tripled in the past 6 years making it one of the fastest growing clubs in what is now the largest Football Association in NSW.

The playing fields at Boondah Reserve see thousands of people each weekend during the playing season and the current fields/amenities are extremely outdated and far from adequate.

I am happy to discuss this matter by phone or in person if required.

Regards,

[Redacted Signature]

**Club President
Narrabeen Football Club**

[Redacted Phone Number]

[Redacted Email Address]



Manly Warringah Football Association
101 South Creek Rd
Cromer NSW 2099
+61 2 9982 6228
admin@mwfa.com.au
www.mwfa.com.au

9 September 2019

MWFA letter of support for new sportsfields in Narrabeen

Attention: Northern Beaches Council

To whom it may concern,

I am writing this letter in relation to a proposal to create new sportsfields at Boondah Reserve as part of a broader plan for a development at 10-12 Boondah Rd and 6 Jacksons Rd, Narrabeen.

The Manly Warringah Football Association (MWFA) controls and administers football on the Northern Beaches and works closely with Northern Beaches Council in relation to implementing a Sportsfield Strategy that states the need to increase the number of sports fields on the Northern Beaches.

The MWFA is the largest football association in NSW with 18,500 grassroots players and 500 elite players, and we are strong advocates of increasing sportsfields for football players and teams. We deal with the Northern Beaches Council Parks Department in a consistent and positive way towards implementing this strategy.

My letter addresses the component of the proposal that caters for the development of the area that will greatly increase the number of sportsfields in the area. The suggested changes, are a tremendous positive step forward increasing capacity in an area of the Northern Beaches that has stretched capacity.

I offer no commentary or opinion on the planning and development component of the proposal.

Kind Regards



David Mason
MWFA CEO

MANLY WARRINGAH FOOTBALL ASSOCIATION: ABN 96 869 552 850



Paula Moreu

From: [REDACTED]
Sent: Friday, 27 September 2019 4:06 PM
To: Council Mailbox
Subject: PEX2019/0003 10-12 Boondah Rd Warriewood NSW 2102
Categories: NF

In reference to the above I would like to reiterate my 4 neighbours & my concern re the proposal for buildings exceeding 3 storeys on Boondah Road.
We would totally oppose that proposal
& I know that Harry Triguboff (Meriton) was blocked from 4-5 storeys so why should Council give in to these new developers?
3 storeys blend in with the trees but not 4-5!

Regards

[REDACTED]
4 residents.
Sent from my iPhone

Paula Moretti

From: Pittwater Natural Heritage Association <pnhainfo@gmail.com>
Sent: Friday, 27 September 2019 5:17 PM
To: Ray Brownlee
Subject: Planning proposal PP0005/16
Categories: sent to information management

Mr Ray Brownlee
General Manager
Northern Beaches Council
Dear Sir

Re: Planning proposal for 6 Jackson's Road and 10-12 Boondah Road Warriewood
Application PP0005/15

Pittwater Natural Heritage Association believes that the remaining land around Warriewood Wetlands should not be rezoned for residential or commercial purposes. We object to the above proposal for the following reasons:
It will cause the loss of an unacceptable amount of bushland. The site of this proposal contains a significant amount of trees and understorey which have value as habitat, a carbon dioxide sink, and act to clean stormwater as it runs into the Warriewood Wetlands. If Northern Beaches Council is, as it states, committed to retention of bushland then it should protect bushland on this valuable site adjacent to Warriewood Wetlands.

The site is in a flood zone so this development will adversely affect the hydrological regime in the vicinity of the wetlands

We believe that the land should be purchased by the NSW State Government and used for a mix of bushland protection purposes and public open space.

Yours Sincerely


Secretary

Pittwater Natural Heritage Association



ITEM 5.2	PLANNING PROPOSAL PEX2019/0005 - HERITAGE LISTING OF 21 WHISTLER STREET MANLY
REPORTING OFFICER	PRINCIPAL PLANNER
TRIM FILE REF	2019/601786
ATTACHMENTS	1 ↓ Planning Proposal - 21 Whistler Street, Manly 2 ↓ Robertson and Hindmarsh Heritage Report 21 Whistler Street, Manly.

PURPOSE

To report a Planning Proposal for 21 Whistler Street, Manly to amend Schedule 5 Environmental Heritage and the Heritage Map of the Manly Local Environmental Plan 2013, and recommend that the Panel advises Council to progress the Planning Proposal to a Gateway Determination.

EXECUTIVE SUMMARY

Development Application 2019/1669 (DA2019/1669) was lodged with Council on 11 October 2018. The application sought consent for the demolition of the existing building on 21 Whistler Street, Manly and the construction of a shop top housing development. The development application was referred to Council's Heritage Advisor for comment due its proximity to a number heritage items in the vicinity. During the assessment of the development application the buildings on the property were identified as being of potential heritage significance due to its association with Thomas Rowe, a celebrated architect and the first Mayor of Manly Council.

Council commissioned an independent heritage consultant to assess the significance of the property. The assessment found that the property met four criteria for a heritage listing and recommended that Council proceed to place an Interim Heritage Order (IHO) on the property.

Council resolved at its meeting of 24 September 2019 to place an IHO on the property which was published in the Government Gazette on 27 September 2019. Subsequently on 16 October 2019, the Local Planning Panel determined the subject development application by way of refusal. The heritage significance of the buildings and the IHO were two of the reasons stated for refusal of the DA.

In accordance with the terms of the IHO, Council now has six months to resolve to list the property as an item of heritage under Schedule 5 of Manly Local Environmental Plan 2013. To list the property as a local heritage item requires the preparation, adoption and gazettal of a Planning Proposal to amend Schedule 5 Environmental Heritage and the Heritage Map of Manly Local Environmental Plan 2013. A Planning Proposal to achieve this outcome has been prepared and is attached to this report for the Panel's consideration.

RECOMMENDATION OF MANAGER STRATEGIC AND PLACE PLANNING

That the Panel:

- A. Consider the attached Planning Proposal;
- B. Recommend that Council proceed to progress the Planning Proposal and list the buildings on the property known as 21 Whistler Street (Lot B DP 368451) as an item of local heritage in Manly Local Environmental Plan 2013;

- C. Recommend that Council forward the Planning Proposal to the NSW Department of Planning, Industry and Environment for a Gateway Determination.

REPORT

BACKGROUND

A Planning Proposal has been prepared by Northern Beaches Council (the 'Applicant') to list the buildings on the subject site at 21 Whistler Street Manly, as an item of local heritage in Schedule 5 of Manly Local Environmental Plan 2013.

Development Application 2019/1669 (DA2019/1669) was lodged with Council on 11 October 2018. The application sought consent for the demolition of the existing building on 21 Whistler Street, Manly and the construction of a shop top housing development. The development application was referred to Council's Heritage Advisor for comment due its proximity to a number heritage items in the vicinity, the closest being the State heritage listed electricity substation at 34 Whistler Street.

During the assessment of this development application, the property was identified as being of potential heritage significance due to its association with Thomas Rowe, a celebrated architect and the first Mayor of Manly Council.

Council subsequently sought independent heritage advice and commissioned a heritage consultant to assess the significance of the property. The outcome of this independent assessment confirmed that the property met four criteria for heritage listing and recommended that Council list the site as an item of local heritage. It also recommended that in the interim, the property should be protected by an Interim Heritage Order (IHO) over the site, made under the provisions of the Heritage Act 1977 (copy of independent Heritage Report provided in Attachment number 2).

Council considered this recommendation at its meeting of 24 September 2019 and resolved to make an IHO for the property, under section 25 of the Heritage Act, 1977. This IHO came into force upon its publication in the Government Gazette on the 27 September 2019. Subsequently on 16 October 2019, the Local Planning Panel determined DA2019/1669 for the property by way of refusal. The heritage significance of the property and the IHO was one of the reasons stated for refusal.

At the time of writing this report the applicant had not made a Class 1 Appeal to the Land and Environment Court.

In accordance with the terms of the IHO, Council now has six months to resolve to list the property as an item of local heritage under Schedule 5 of Manly Local Environmental Plan 2013. To list the property as a local heritage item requires the preparation, adoption and gazettal of a Planning Proposal to amend Schedule 5 and the Heritage Map of Manly Local Environmental Plan 2013.

A Planning Proposal to achieve this outcome has been prepared and is attached to this report for the Panel's consideration.

SITE CONTEXT

The subject property at 21 Whistler Street, Manly is legally described as Lot B DP 368451. It is approximately 270m² in size and is currently occupied by a modified late 19th century single storey building with a two storey mid 20th century addition on its northern extent. The building encompasses two dwellings, a lock-up garage and an interior garden. The building is well-maintained and has identified heritage value. Historical research has indicated the site has been used for residential purposes since 1887.

The site is zoned B2 Local Centre under the Manly Local Environmental Plan 2013, with a prescribed 15m building height and a floor space ratio of 3:1. A small portion of north-western corner of the property is identified as being affected by a medium risk flood precinct. The building is

surrounded by a mixture of residential and commercial buildings as well as an electricity substation. These buildings are of various ages, height and style.

The site is located close to the southwest corner of the intersection between Whistler Street and Raglan Street. It is also situated in close proximity to the Manly Town Centre, Manly Oval and Manly Beach.

To the east of the property at 34 Whistler Street is the State heritage listed 'Electricity substation No 15009', which is listed as item I255 in Schedule 5 of Manly Local Environmental Plan 2013, in addition to it being listed on the State Heritage Register. Ivanhoe Park to the west has also recently been added to the State Heritage Register as item 02029.



Figure: 1 Aerial Image - Subject property marked by red cross hatching

ASSESSMENT OF PLANNING PROPOSAL

The Planning Proposal generally complies with the Department of Planning, Industry and Environment's guidelines including *A Guide to Preparing Local Environmental Plans* and *A Guide to Preparing Planning Proposals*.

Strategic Merit for the Planning Proposal

The *Greater Sydney Region Plan 2056 – A Metropolis of Three Cities – Connecting People* sets out a vision, objectives, strategies and actions from a metropolis of three cities across Greater Sydney. Manly is located within the “Eastern Harbour City” area.

The Planning Proposal is consistent with the following objective within the *Greater Sydney Regional Plan*:

Objective 13 (Environmental heritage is identified, conserved and enhanced):

The Planning Proposal is consistent with this objective in that it has identified a property with heritage significance (21 Whistler Street, Manly) and is proposing to protect it by heritage listing. This will ensure that any future decisions for this property will take into account its identified heritage significance. Also heritage listing of the property, as proposed by the Planning Proposal, will raise awareness of heritage values within the local community.

The *North District Plan* sets out the planning priorities and actions for the growth of the North District. The site is located within the Manly Local Centre, as identified in the *North District Plan*. The Planning Proposal is consistent with the North District Plan, particularly with respect to the following planning priorities:

Planning Priority N6 (Creating and renewing great places and local centres, and respecting the District’s heritage):

The Planning Proposal is consistent with this planning priority as it is identifying and protecting a property which has been assessed as having local heritage significance. As heritage and history are important components of local identity, this Planning Proposal will contribute to the Manly Town Centre by ensuring that a piece of its history is protected for future generations.

Draft Northern Beaches Local Strategic Planning Statement, Towards 2040

At the time of writing Council’s *Draft Northern Beaches Local Strategic Planning Statement, Towards 2040* has just completed public exhibition. This statement sets out Council’s priorities and directions for the next twenty years, including the following priority:

Priority 18: Protected, conserved and celebrated heritage

The Planning Proposal is consistent with this priority to identify and protect heritage sites by listing the property as a heritage item. Listing the property as an item of heritage will ensure that the property will be protected.

Conclusion

The Planning Proposal is consistent with the strategic directions to identify and protect heritage contained within the *Greater Sydney Regional Plan* and the *North District Plan*. It is also consistent with the heritage priority in the Northern Beaches *Draft Local Strategic Planning Statement – Towards 2040*. The listing of 21 Whistler Street, Manly as a heritage item, as proposed by this Planning Proposal, will ensure that the significance of the property is recognised and protected.

Site Specific Merit for the Planning Proposal

The property has undergone a range of heritage research and investigation, which has indicated the property is of heritage significance. The investigation by Robertson & Hindmarsh (and agreed by staff) revealed that the property meets four of the NSW Heritage Office's criterion for listing as follows:

(a) An item is important in the course, or pattern, of NSW's cultural or natural history (or the cultural or natural history of the local area)

No. 21 Whistler Street, Manly is associated with a significant phase in the development of New Brighton (later Manly), prior to the formation of the municipality, as a villa suburb, with the quality of the building stock controlled by the scale of the lots in the subdivision. This remnant of the New Brighton Estate is of Local Significance in terms of its rarity and for historical significance.

The remnant of "Roseville" demonstrates the series of substantial speculative suburban villas set in large grounds designed and erected for professional men by Thomas Rowe within villa subdivisions during the 1860s and 1870s, including "Tresco" and "Villa Caprera" in Elizabeth Bay and "Roseville" at Manly.

No 21 Whistler Street meets the requirement for the criterion of historical significance because it:

- shows evidence of a significant human activity
- is associated with a significant activity or historical phase

(b) An item has strong or special association with the life or works of a person, or group of persons, of importance in NSW's cultural or natural history (or the cultural or natural history of the local area)

No 21 Whistler Street, Manly is associated with a significant human occupation (ie the provision of healthy environments) as well as with a significant person, Thomas Rowe, the first Mayor of Manly, and one of the founders of the Institute of Architects

No 21 Whistler Street meets the requirement for the criterion of historical association significance because it:

- shows evidence of a significant human occupation
- is associated with a significant person

(c) An item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in NSW (or the local area)

No 21 Whistler Street, Manly is associated with a significant technical achievement (ie the provision of healthy urban environments in the absence of urban services infrastructure) as well as with a significant person, Thomas Rowe, the first Mayor of Manly and one of the founders of the Institute of Architects.

No 21 Whistler Street meets the requirements for the criterion of technical significance because it:

- shows or is associated with, creative or technical innovation or achievement

- is the inspiration of a creative or technical innovation or achievement

(f) An item possesses uncommon, rare or endangered aspects of NSW's cultural or natural history (or the cultural or natural history of the local area)

No 21 Whistler Street, Manly is rare as the only large nineteenth century outbuilding surviving in the Manly Town Centre and is rare as a physical manifestation of a way of life that has been made redundant by the provision of piped water supply and piped sewerage services to urban areas

No 21 Whistler Street meets the requirements for the criterion of rarity because it:

- provides evidence of defunct custom, way of life or process with regard to the provision of water and the removal of waste
- is the only example of its type remaining in the Manly Town Centre area

Conclusion

The subject property has been identified as meeting four of the NSW Heritage Office's criterion for heritage listing, whereas only meeting one criterion is enough to proceed with a listing. As it meets four criterion, the property is able to demonstrate its heritage significance which in turn demonstrates that the Planning Proposal to list the property has site specific merit to proceed.

Additional information on how the property meets these criterion can be found in the attached Robertson & Hindmarsh report.

CONSULTATION

Public Exhibition of the Planning Proposal will take place following the receipt of a Gateway Determination (the Determination). The Planning Proposal will be exhibited for a minimum of 28 days or otherwise directed by the Determination.

Due to the nature of the Planning Proposal, the short timeframe to complete the Planning Proposal process and the previous engagement associated with the abovementioned development application, it has not undergone a non-statutory exhibition process and no State agencies have been notified.

Statutory public exhibition of the Planning Proposal will take place following the receipt of a Gateway Determination (the Determination). The Planning Proposal will be exhibited for a minimum of 28 days or otherwise directed by the Determination.

Should the Planning Proposal proceed to exhibition, consultation will be undertaken as follows:

- A public notice in the Manly Daily notifying of the public exhibition and exhibition period;
- Notification to affected and adjoining land owners;
- Notification to the NSW Heritage Office;
- Electronic copies of the exhibition material placed on Council's website;
- Printed copy of the Planning Proposal placed in Manly Customer Service Centres.

TIMING

It is anticipated that the timing for completion of this Planning Proposal would be 6 months from the date of Council's approval to proceed. Following the issue of a Gateway Determination, Council will be required to formally exhibit the Planning Proposal for 28 days (or otherwise as required by the Gateway Determination). The matter will be reported back to Council for final consideration following the public exhibition.

LINK TO COUNCIL STRATEGY

The Planning Proposal aligns with the following goals of the *Northern Beaches Community Strategic Plan 2018-2028*

Goal 12: Our community is friendly and supportive

d. Values and celebrates our diverse heritage and cultural differences

FINANCIAL CONSIDERATIONS

The Planning Proposal will be prepared within the existing Strategic and Place Planning budget.

SOCIAL CONSIDERATIONS

Protection of the built heritage of the Northern Beaches has significant positive social impacts for the broader community. It provides opportunities for significant items from our history to be protected and preserved for future generations to enjoy and provides a valuable physical link to our past. This Planning Proposal therefore will have a positive social impact.

ENVIRONMENTAL CONSIDERATIONS

It is not considered that there will be any significant impact on the natural environment as a result of this Planning Proposal.

GOVERNANCE AND RISK CONSIDERATIONS

The heritage listing of the property is unlikely to generate significant additional risk.

PLANNING PROPOSAL

Amendments to Manly Local Environmental Plan 2013

HERITAGE LISTING OF 21 WHISTLER STREET, MANLY

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Part 1 – Intended Outcomes

The intended outcome of this Planning Proposal is to list 21 Whistler Street Manly, legally described as Lot B DP 368451, as a heritage item of local significance in the Manly Local Environmental Plan 2013

Part 2 – Explanation of Provisions

The proposal seeks to amend Manly LEP 2013 as follows:

Amend Heritage Map (HER_003) to add the property on 21 Whistler Street, Manly, as a General Heritage Item.

Amend Schedule 5 – Environmental Heritage to add the property (Lot B DP 368451) as item I286

Site Description

The land subject to this Planning Proposal is legally described as Lot B DP 368451. The property is also described as 21 Whistler Street, Manly.

The site has an area of approximately 270m². To the east of the site is a state heritage listed art deco electricity substation and a residential apartment building. To the north, west and south are a mixture of commercial and residential developments of varying age, height and style. Further to the west across Belgrave Street is the state heritage listed Ivanhoe Park. To the south is Manly Wharf and to the southeast is The Corso.

Existing improvements on the subject site include a modified single storey late 19th Century building with a mid-20th Century two storey addition on the northern edge. The subject property is zoned B2 Local Centre under the Manly Local Environmental Plan 2013. The land is also subject to a 15m height limit and a floor space ratio of 3:1.



Figure 1: Aerial image – subject site marked by red cross hatching

Background

Development Application (DA2019/1669) was lodged with Council on 11 October 2018. The application sought consent for the demolition of the existing building on 21 Whistler Street, Manly and the construction of a shop top housing development. The development application was referred to Council's Heritage Advisor for comment due its proximity to a number heritage

items within the vicinity, the closest being the State Heritage listed electricity substation at 34 Whistler Street, Manly.

During the assessment of this development application, the property was identified as being of potential heritage significance due to its association with Thomas Rowe, a celebrated architect and the first Mayor of Manly Council. While the development application did provide a Heritage Impact Statement noting this connection, it considered the building and the connection to be of low significance and not worthy of retention and protection. It recommended a photographic archival recording and the development of an interpretation strategy. Council's heritage advisor after reviewing the relevant information established that the building was of significance due to the link and should be retained and protected.

Given the discrepancy between the Heritage Impact Statement and Council assessment of the level of heritage significance, a heritage consultant (Full Circle Heritage) was engaged to undertake an independent assessment in April 2019.

The results of the assessment indicated that based on the material available, the building could meet the threshold for inclusion in the Manly Local Environmental Plan 2013 as an item of local heritage significance. The assessment found that 21 Whistler Street, Manly contained the remains of the former service wing of a much larger dwelling called 'Roseville' that Rowe himself designed and constructed in 1876/7. Rowe owned the property for a number of years and resided there for a period while serving as the first Mayor of Manly Council. The assessment concluded with the recommendation to undertake additional research and assessment to obtain a greater understanding of the heritage significance of the building, including an assessment against the NSW Heritage Office's guidelines and criteria for heritage listing. Based on the recommendation Council engaged a heritage consultant to undertake the additional research and assessment.

Robertson and Hindmarsh Architects (RHA) were engaged in June 2019 to undertake the additional research. RHA concurred with the findings of Full Circle Heritage, that the property contained the remnants of the service wing of 'Roseville' and further expanded on that research. The assessment indicated that the property was a rare example of a Rowe building in Manly and furthermore the survival of the service wing demonstrated Rowe's philosophy and approach to sanitation and public health in building design.

In summary, the consultant found that the property met four criteria of the NSW Heritage Office's criteria for a heritage listing being:

- Historical significance as it shows evidence of a significant human activity and is associated with a historical phase being the development of Manly; and
- Associative significance due to its links to Thomas Rowe, a celebrated architect and the first Mayor of Manly; and
- Technical significance due its evidence of Thomas Rowe's approach to sanitation and health in building design; and
- Rarity as the only remaining large service outbuilding in the Manly town centre from the 19th Century period.

Further information on how the property meets the established criterion for inclusion can be found in the site specific merit test assessment (page 9), or alternatively in RHA's report, which is attached to this Planning Proposal.

In addition, RHA also recommend that Council proceed to place an Interim Heritage Order (IHO) on the property. Council resolved at its meeting of 24 September 2019 to place an IHO on the property, which was published in the Government Gazette on the 27th of September 2019. Subsequently on 16 October 2019, the Northern Beaches Local Planning Panel determined DA2019/1669 for the property by way of refusal. The heritage significance of the property and the IHO formed one of the reasons stated for refusal.

In accordance with the terms of the IHO, Council now has six months to decide whether to list the property as an item of heritage in the Manly Local Environmental Plan 2013 or not. To list the item requires the preparation, adoption and gazettal of a Planning Proposal to amend the Manly Local Environmental Plan 2013. This Planning Proposal aims to achieve this outcome.



Figure 2: Street view of 21 Whistler Street (Robertson & Hindmarsh Pty Ltd, 1 July 2019)

Part 3 – Justification

Section A – Need for the Planning Proposal

1. Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?

No. This Planning Proposal is not the result of an endorsed local strategic planning statement, strategic study or report. It is the result of a detailed heritage research and investigation which identified the property has local heritage significance resulting in the issuing of an Interim Heritage Order.

The Planning Proposal does give effect to an objective of the publically exhibited Draft Northern Beaches Local Strategic Planning Statement *Towards 2040*:

Priority 18: Protected, conserved and celebrated heritage

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. Items of heritage significance are required to be listed in a local environmental plan and the listing gives weight to its protection. As such, the Planning Proposal is the only way of achieving this outcome.

Section B – Relationship to strategic planning framework

3. Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

a) Does the proposal have strategic merit?

Yes, the Planning Proposal will give weight and effect to the following objectives and actions of the following plans;

Greater Sydney Regional Plan 2056: Objective 13 (Environmental heritage is identified, conserved and enhanced)

The subject property has been identified as being of heritage value by meeting four of the criteria established by the NSW Heritage Office. Formally listing the property meets this objective by allowing for the conservation of the property and its heritage values. Listing the property will also allow for future enhancement works.

North District Plan: Planning Priority N6 (Creating and renewal of great places and local centres, and respecting the District heritage)

The Planning Proposal will give weight to this priority by respecting the heritage of Manly by conserving remaining fabric with strong links to the development of the centre. Additionally, retained heritage properties can function as a catalyst for the renewal of centres, such as Manly.

b) Does the proposal have site-specific merit?

Yes, the property has undergone a range of heritage research and investigation, which has indicated the property is of heritage significance. The investigation revealed that the property meets four of the NSW Heritage Office's criterion for listing which is detailed below:

(a) An item is important in the course, or pattern, of NSW's cultural or natural history (or the cultural or natural history of the local area)

No. 21 Whistler Street, Manly is associated with a significant phase in the development of New Brighton (later Manly), prior to the formation of the municipality, as a villa suburb, with the quality of the building stock controlled by the scale of the lots in the subdivision. This remnant of the New Brighton Estate is of Local Significance in terms of its rarity and for historical significance.

The remnant of "Roseville" demonstrates the series of substantial speculative suburban villas set in large grounds designed and erected for professional men by Thomas Rowe within villa subdivisions during the 1860s and 1870s, including "Tresco" and "Villa Caprera" in Elizabeth Bay and "Roseville" at Manly.

No 21 Whistler Street meets the requirement for the criterion of historical significance because it:

- shows evidence of a significant human activity
- is associated with a significant activity or historical phase

(b) An item has strong or special association with the life or works of a person, or group of persons, of importance in NSW's cultural or natural history (or the cultural or natural history of the local area)

No 21 Whistler Street, Manly is associated with a significant human occupation (ie the provision of healthy environments) as well as with a significant person, Thomas Rowe, the first Mayor of Manly, and one of the founders of the Institute of Architects

No 21 Whistler Street meets the requirement for the criterion of historical association significance because it:

- shows evidence of a significant human occupation
- is associated with a significant person

(c) An item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in NSW (or the local area)

No 21 Whistler Street, Manly is associated with a significant technical achievement (ie the provision of healthy urban environments in the absence of urban services infrastructure) as well as with a significant person, Thomas Rowe, the first Mayor of Manly and one of the founders of the Institute of Architects.

No 21 Whistler Street meets the requirements for the criterion of technical significance because it:

- shows or is associated with, creative or technical innovation or achievement
- is the inspiration of a creative or technical innovation or achievement

(f) An item possesses uncommon, rare or endangered aspects of NSW's cultural or natural history (or the cultural or natural history of the local area)

No 21 Whistler Street, Manly is rare as the only large nineteenth century outbuilding surviving in the Manly Town Centre and is rare as a physical manifestation of a way of life that has been made redundant by the provision of piped water supply and piped sewerage services to urban areas

No 21 Whistler Street meets the requirements for the criterion of rarity because it:

- provides evidence of defunct custom, way of life or process with regard to the provision of water and the removal of waste
- is the only example of its type remaining in the Manly Town Centre area

Additional information on how the property meets these criteria can be found in the attached Robertson and Hindmarsh report.

4. Is the Planning Proposal consistent with a council's local strategy or other local strategic plan?

The Planning Proposal is consistent with the Northern Beaches Community Strategic Plan *Shape 2028*; Goal 12 (d) 'Values and celebrates our diverse heritage and cultural differences'. Listing the property as an item of heritage under Schedule 5 of the Manly Local Environmental Plan 2013 will protect the property allowing Thomas Rowe's contribution to the development of Manly to be conserved and protected.

The Planning Proposal will also give effect to an objective of the publically exhibited Draft Northern Beaches Local Strategic Planning Statement *Towards 2040* and Priority 18: Protected, conserved and celebrated heritage.

Listing the subject property as an item of heritage will enable the protection and conservation of its heritage values. Retaining the building would also allow for the recognition and celebration of these values, as well as the role Thomas Rowe played as the first Mayor of Manly.

5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

The Planning Proposal is considered consistent with the relevant State Environmental Planning Policies.

Table 1. Compliance with State Environmental Planning Policies (SEPPs)

SEPPs (as at September 2017)		Applicable	Consistent
1	Development Standards	YES	Yes
19	Bushland in Urban Areas	NO	N/A
21	Caravan Parks	YES	YES
33	Hazardous and Offensive Development	YES	YES
36	Manufactured Home Estates	NO	N/A
44	Koala Habitat Protection	YES	YES
47	Moore Park Showground	YES	YES
50	Canal Estate Development	YES	YES
55	Remediation of Land	YES	YES
64	Advertising and Signage	YES	YES
65	Design Quality of Residential Apartment Development	NO	N/A
70	Affordable Housing (Revised Schemes)	YES	YES
	(Aboriginal Land) 2019	NO	N/A
	(Affordable Rental Housing) 2009	YES	YES
	(Building Sustainability Index: BASIX) 2004	NO	N/A
	Coastal Management 2018	NO	N/A
	(Concurrences) 2018	NO	N/A
	(Education Establishments and Child Care Facilities) 2017	NO	N/A
	(Exempt and Complying Development Codes) 2008	YES	YES
	(Gosford City Centre) 2018	NO	N/A
	(Housing for Seniors or People with a Disability) 2004	NO	N/A
	(Infrastructure) 2007	YES	YES
	(Kosciuszko National Park – Alpine Resorts) 2007	NO	N/A
	(Kurnell Peninsula) 1989	NO	N/A
	(Mining, Petroleum Production and Extractive Industries) 2007	NO	N/A
	(Miscellaneous Consent Provisions) 2007	NO	N/A
	(Penrith Lakes Scheme) 1989	NO	N/A
	(Primary Production and Rural Development) 2019	NO	N/A
	(State and Regional Development) 2011	NO	N/A
	(State Significant Precincts) 2005	NO	N/A
	(Sydney Drinking Water Catchment) 2011	NO	N/A
	(Sydney Region Growth Centres) 2006	NO	N/A
	(Three Ports) 2013	NO	N/A
	(Urban Renewal) 2010	NO	N/A
	(Vegetation in Non-Rural Areas) 2017	NO	N/A
	(Western Sydney Employment Area) 2009	NO	N/A

	(Western Sydney Parklands) 2009	NO	N/A
Sydney Regional Environmental Plans (Deemed SEPPs):			
8	(Central Coast Plateau Areas)	NO	N/A
9	Extractive Industry (No 2 -1995)	NO	N/A
16	Walsh Bay	NO	N/A
20	Hawkesbury – Nepean River (No 2 – 1997)	NO	N/A
24	Homebush Bay Area	NO	N/A
26	City West	NO	N/A
30	St Marys	NO	N/A
33	Cooks Cove	NO	N/A
	(Sydney Harbour Catchment) 2005	NO	N/A

6. Is the planning proposal consistent with applicable Ministerial Directions?

The Planning Proposal is consistent with the relevant Ministerial Directions.

Ministerial Direction 1.1: Business and Industrial Zones

This direction applies as the land subject to the Planning Proposal is zoned B2 Local Centre which is a business zone. The Planning Proposal is consistent with this direction as it does not prevent the use of the site for employment generating purposes and it does not seek to change any other control applying to the site.

Ministerial Direction 2.3: Heritage Conservation

The objective of this direction is to conserve items, areas and places of heritage significance and it applies to all relevant planning authorities. In accordance with section (4) (a) of the direction, the planning proposal will contain provisions that facilitate the protection of the item. Further, a study of the item and its heritage significance has been undertaken, which gives further weight to this direction.

No inconsistency with the direction is sought.

Ministerial Direction 3.1: Residential Zones

This direction applies to the site as the zoning of the property allows for residential development. The Planning Proposal is consistent with this direction as it does not prevent the use of the site for a range of residential purposes and it does not seek to change any other control applying to the site.

Table 2. Compliance with State Environmental Planning Policies (SEPPs)

Ministerial Direction	Comment
1. Employment and Resources	
1.1 Business and Industrial Zones	Applicable – see above commentary
1.2 Rural Zones	Not applicable
1.3 Mining, Petroleum Production and Extractive Industries	Not applicable
1.4 Oyster Aquaculture	Not applicable
1.5 Rural Lands	Not applicable
2. Environment and Heritage	
2.1 Environmental Protection Zones	Not applicable

2.2 Coastal Management	Not applicable
2.3 Heritage Conservation	Applicable – see above commentary
2.4 Recreation Vehicle Areas	Not applicable
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Not applicable
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	Applicable – see above commentary
3.2 Caravan Parks and Manufactured Home Estates	Not applicable
3.3 Home Occupations	Not applicable
3.4 Integrated Land Use and Transport	Not applicable
3.5 Development Near Regulated Airports and Defence Airfields	Not applicable
3.6 Shooting Ranges	Not applicable
3.7 Reduction in non-hosted short term rental accommodation period	Not applicable
4. Hazard and Risk	
4.1 Acid Sulfate Soils	Consistent
4.2 Mine Subsidence and Unstable Land	Not applicable
4.3 Flood Prone Land	Consistent – no changes to flooding provisions proposed
4.4 Planning for Bushfire Protection	Not applicable –The property is not identified as bushfire prone land
5. Regional Planning	
5.1 Implementation of Regional Strategies	Not applicable
5.2 Sydney Drinking Water Catchment	Not applicable
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Not applicable
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable
5.5 – 5.8 Revoked	
5.9 North West Rail Link Corridor Strategy	Not applicable
5.10 Implementation of Regional Plans	Not applicable
5.11 Development of Aboriginal Land Council land	Not applicable
6. Local Plan Making	
6.1 Approval and Referral Requirements	Consistent
6.2 Reserving Land for Public Purposes	Not applicable – no land reservation proposed
6.3 Site Specific Provisions	Consistent
7. Metropolitan Planning	
7.1 Implementation of A Plan for Growing Sydney	Consistent
7.2 Implementation of Greater Macarthur Land Release Investigation	Not applicable
7.3 Parramatta Road Corridor Urban Transformation Strategy	Not applicable
7.4 Implementation of North West Priority growth Area Land Use and Infrastructure Implementation Plan	Not applicable
7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and	Not applicable

Infrastructure Implementation Plan	
7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Not applicable
7.7 Implementation of Glenfield to Macarthur Urban Renewal Corridor	Not applicable
7.8 Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan	Not applicable
7.9 Implementation of Bayside West Precincts 2036 Plan	Not applicable
7.10 Implementation of Planning Principles for the Cooks Cove Precinct	Not applicable

Section C – Environmental, social and economic impact

- 7. Are there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

It is unlikely that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of amending the Manly LEP 2013 to include the property as an item of heritage.

- 8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

It is unlikely that other environment effects will result from amending the Manly LEP 2013. The proposed amendments aim to protect the heritage significance of the subject site and as such any environmental effects are likely to be positive.

- 9. Has the Planning Proposal adequately addressed any social and economic effects?**

The Planning Proposal will ensure social and economic effects are adequately addressed through the formal addition of the property on 21 Whistler Street, Manly, as a heritage item. In particular, heritage listing safeguards the environmental, economic and social benefits of this limited resource for present and future generations.

In terms of social effects, the Planning Proposal hopes to safeguard Manly's local history. The adaptive reuse of heritage buildings reduce the consumption of resources and the areas ecological footprint. In addition, the adaptive reuse of heritage buildings can provide impetus for revitalising a neighbourhood, through the creation of unique precincts that embrace and celebrate the heritage and stories of the area. This in turn provides economic uplift and benefit for the broader Manly locality.

Section D – State and Commonwealth interests**10. Is there adequate public infrastructure for the planning proposal?**

The land subject to the Planning Proposal is currently supported by adequate infrastructure. In addition, the Planning Proposal does not create the requirement for new or augmented infrastructure.

11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

The Planning Proposal is being prepared in accordance with consultation guidelines and provisions prepared by the former Department of Planning and all statutory consultation will occur in accordance with the requirements of any future Gateway Determination, including any State or Commonwealth authorities.

Part 4 – Maps



Figure 3: Existing Heritage Map (HER_003) – Manly LEP 2013

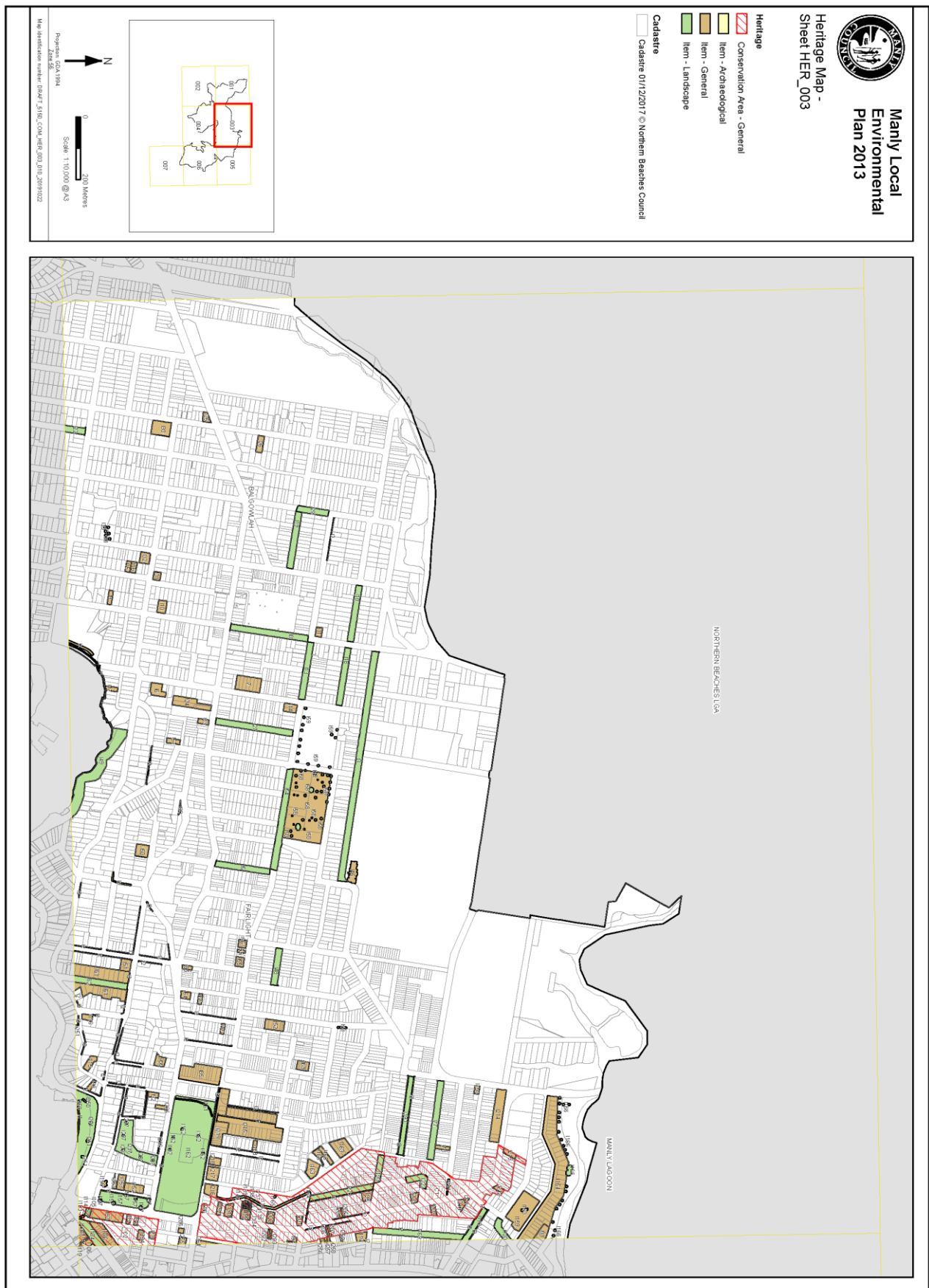


Figure 4: Proposed Heritage Map (HER_003) – Manly LEP 2013

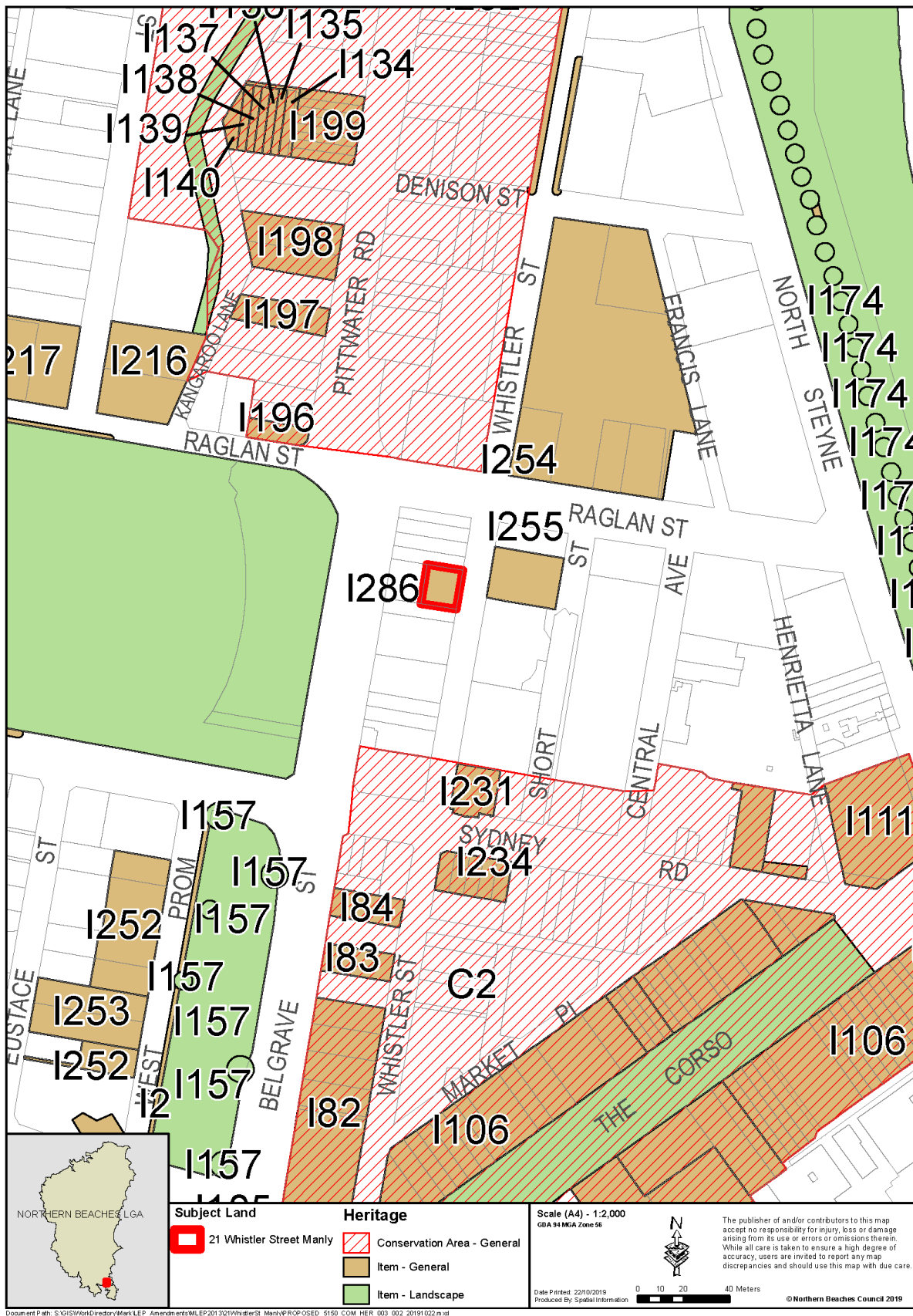


Figure 5: Extract from Proposed Heritage Map (HER_003) – Manly LEP 2013

Part 5 – Community Consultation

Statutory public exhibition of the Planning Proposal will take place following the receipt of a Gateway Determination (the Determination). The Planning Proposal will be exhibited for a minimum of 28 days or otherwise directed by the Determination.

Should the Planning Proposal proceed to exhibition, consultation will be undertaken as follows:

- A public notice in the Manly Daily notifying of the public exhibition and exhibition period;
- Notification to affected and adjoining land owners;
- Notification to the NSW Heritage Office;
- Electronic copies of the exhibition material placed on Council's website;
- Printed copy of the Planning Proposal placed in Manly Customer Service Centre.

No other state agencies have been identified at this stage as requiring consultation; however, the Determination may identify relevant agencies. Should the Determination require consultation with other agencies they will be notified of the proposal and given the opportunity to provide a response.

Part 6 – Project Timeline

Task	Anticipated timeframe
Submission to DPIE for Gateway Determination	February 2020
Gateway Determination	April 2020
Government agency consultation (if required)	May 2020
Commencement of public exhibition	June 2020
Completion of public exhibition	July 2020
Consideration of submissions	July 2020
Consideration of a proposal post-exhibition	August 2020
Date of submission to the Department to finalise the LEP	August 2020
Forwarding of the plan to the PCO for publication	September 2020
Gazettal of LEP Amendment	October 2020

Further Investigation & Comparative Review 21 Whistler Street, Manly



No 21 Whistler Street, Manly (Photo: Robertson & Hindmarsh Pty Ltd, 1 July 2019)

for
Northern Beaches Council

Prepared by
Robertson & Hindmarsh Pty Ltd
Architects

ABN 47 000 915 622
Phone: 02 9439 7779
Email: rharch@ozemail.com.au

1 July 2019

Robertson & Hindmarsh Pty Ltd

Further Investigation & Comparative Review
21 Whistler Street, Manly
1 July 2019

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Further Investigation & Comparative Review
21 Whistler Street, Manly
1 July 2019

1.0 Introduction

The property at No. 21 Whistler Street, Manly, is subject to a Development Application involving the demolition of the buildings on the property. Northern Beaches Council commissioned a report from Full Circle Heritage to provide an independent review of the heritage issues associated with the works proposed in DA2018/1669 for No. 21 Whistler Street, Manly. This included a review of the Statement of Heritage Impact prepared by Heritage 21, supplementary documentary investigation to assist with determining the heritage significance of the place, and an analysis of any possible heritage impacts based on those findings. This report was inconclusive as to whether the site should be heritage listed. It did conclude that the building on the site had the potential to meet the threshold for local heritage listing, however recommended further investigation and comparative analysis be undertaken, considering factors such as:

- the prevalence of Thomas Rowe buildings in the Manly area;
- how this building compares with other remaining Thomas Rowe buildings still in existence;
- how this building compares with the other mid-late Victorian era buildings in the Manly Town Centre; and
- how this building compares with other outbuilding/domestic service buildings remaining in Manly.

Full Circle Heritage recommended that additional work be undertaken to fully assess the heritage significance of the property to allow Council to make an informed decision about the site.

Council's Brief for the additional work, dated June 2019, stated:

This review will involve:

1. Review existing reports

Review DA documentation, specifically the Statement of Heritage Impact - Heritage 21 (September 2018) and Supplementary Heritage Statement, also by Heritage 21 (April 2019);
Review the Independent Heritage Review – Full Circle Heritage (April 2019)

2. Site inspection

Inspection of site and its context.

3. Further investigation and Comparative Assessment

Considering the recommendations of the Independent Heritage Review report by Full Circle Heritage, undertake any necessary further investigations, focusing on the comparative assessment outlined in 4.3 of this report.

4. Assessment of Heritage Significance

Considering the further investigation and comparative assessment work, assess the site against the NSW Heritage Assessment Criteria and make a recommendation as to whether it meets the threshold for local listing.

5. Recommendations

Considering the circumstances (current DA pending involving demolition), further investigation and the assessment of heritage significance, make clear recommendations to Council as to how it should proceed with this matter.

Robertson & Hindmarsh Pty Ltd was engaged by Northern Beaches Council on 26 June 2019 to undertake the additional work recommended in the Full Circle Heritage report dated April 2019.

2.0 Report authors

The authors of this report are:

Dr Scott Robertson, BSc (Arch), BArch (Hons), MB Env (Blg Cons), PhD
Director, Robertson & Hindmarsh Pty Ltd

Dr Noni Boyd, BArch, MSc Arch Cons, PhD
Architectural Historian & Heritage Consultant

Further Investigation & Comparative Review
21 Whistler Street, Manly
1 July 2019

3.0 Referenced documents

This report is to be read in conjunction with the following reports (especially their History sections):

- Statement of Heritage Impact, September 2018 by Heritage 21,
- Supplementary Heritage Statement, April 2019 by Heritage 21,
- 21 Whistler Street, Manly: Independent Heritage Review – DA 2018/1669, April 2019 by Full Circle Heritage.

4.0 History

The research and preparation of a full history of the site was specifically excluded from this report by Northern Beaches Council in its brief dated June 2019. However, the following table is a summary chronology derived from the previous reports on the property and supplemented by additional historical research by Robertson & Hindmarsh Pty Ltd which was found to be necessary to properly inform this study.

Date	Item	Reference
1842	100 acres granted to John Thompson	
1855	Subdivision of Ellensville includes the block bounded by Raglan and Whistler Streets & the Promenade. 11 lots Map by Reuss & Browne	NLA Map F 642C
c.1855	Map of Brighton, Manly Beach shows lots 1-11 & one building (on lot 20)	NLA Map F 642A
1867	Rowe family living in Tudor House, Victoria Street, Darlinghurst	Sydney Mail 19 Jan 1867
1868	Thomas Rowe notes that he had not long been a resident of Manly and supported the erection of a punt at the Spit as it took 1½ hours to get to Sydney Location of his residence not determined. Short-lived residency in Manly at that time	SMH 29 August 1868
1869	Rowe family lived in Arlington Terrace, Upper William Street, Darlinghurst	Sydney Mail 20 February 1869
c. 1869 – c.1876	Rowe designed "Tresco", Elizabeth Bay which was part of the villa subdivision designed by Rowe & which included houses to his design. Rowe family lived in Arlington Terrace, Darlinghurst Rowe served as Alderman for the Bourke Ward of Sydney	SHR Listing for Tresco Obituary
1872	Two desirable villa residences, Elizabeth Bay, to let or sell. Designed by Thomas Rowe	SMH 19 March 1872
1875	Manly in 1875, illustration in the Illustrated Sydney News. Settlement concentrated around the Corso	ISN 16 Jan 1875
October 1875	Rowe tenders for the erection of a cottage at Manly, probably "Roseville" & outbuildings. Masons and Bricklayers work	SMH 19 October 1875
By August 1876	Thomas Rowe Freeholder, Petition to create the Municipal District of Brighton Lots 8, 9, 10 & 11 of the Brighton Estate owned by Thomas Rowe (architect & 1 st Mayor of Manly)	SMH 15 August 1876
February 1876	Rowe tenders for plastering and cementing cottage at Manly Beach	SMH 19 February 1876
September 1876	Damage to garden fence of residence of Thomas Rowe	NSW Police Gazette 13 September 1876
December 1876	Letter to the Editor from Thomas Rowe, "Roseville", Manly	SMH 6 December 1876
March 1877	Death of Charlotte Jane Rowe (nee Piper), first wife of Thomas Rowe at Roseville. Aged 38	SMH 21 March 1877
1877	Plan of 19 Villa Sites the pick of Manly Beach (located to the north of Raglan Street) shows Rowe's allotments to the south of Raglan Street	SLNSW ML Z/SP/M5/1943
1877	"Caprera" at Elizabeth Bay Point designed by Thomas Rowe for sale or to let	SMH 3 February 1877

Further Investigation & Comparative Review
21 Whistler Street, Manly
1 July 2019

Date	Item	Reference
By 1879	Rowe's cottage in Manly had become a local landmark, other buildings were noted as being 'near the residence of Thomas Rowe'	SMH 23 April 1879
1879	To LET, handsome commodious COTTAGE (new), containing 9 rooms bathroom, pantry, storeroom, kitchen, laundry, and every convenience, with splendid tanks, situated in the most sheltered part of this rising and picturesque suburb facing the park (ie Rowe's Manly house)	SMH 14 June 1879
May 1880	Sale of the premises and surplus furniture of "Roseville", Manly by Thomas Rowe	SMH 5 May 1880
November 1880	Rowe family living in another of the houses he had designed and erected, "Caprera", Elizabeth Bay	SMH 27 November 1880
By 1881	Redman Terrace, East Esplanade, Manly Attributed to Thomas Rowe	
1883	Subdivision of the "Roseville" Manly property into four allotments in addition to the house allotment. The auction notice shows the internal plan of "Roseville" as well as the internal plan of the outbuildings (see Figure 4.1)	ML M5/ 742 Manly Subdivision Plans
1884	Sale of "Caprera", Elizabeth Bay within Rowe's villa subdivision, as Thomas Rowe leaving for Europe. (SHR listed as Ashton)	SMH 20 Feb 1884
1885	"Roseville" property purchased by Samuel Bennett Bailey.	SMH 8 November 1887
1887	Property's name changed to "Restormel". Bankruptcy of Bennett Bailey	SMH 8 November 1887
By 1887	MWS&DB survey (Sheet 29) showed an extended outbuilding along the Whistler Street boundary & also a water closet building north of the house	Manly Local Studies Collection
1887	Description of "Restormel" including rooms. Additional rooms had been added by this time	
1899	Death of Thomas Rowe, President of the Metropolitan Water and Sewerage Board. At "Mona", Darling Point	ATCJ 21 Jan 1899 Evening News 14 Jan 1899
From 1903	Street name changed from East Promenade to Pittwater Road	
1912	North (lawn) part of the site fronting Raglan Street advertised for sale. By this date property had been brought under the Real Property Act	Figure 7 in Full Circle Report
1913	Bennett family remain in occupation	
By 1914	Street name changed from Pittwater Road to Belgrave Street (house was No. 40)	
By December 1915	"Restormel", Board and Residence Winter terms, handy surf	SMH 8 Dec 1915 Daily Telegraph 20 May 1916
1916	Furnished Flats, "Restormel", bed sitting rooms, double and single rooms. Mrs McCormack late of White's Flats, Corso	Daily 16 Dec 1916
1916	North half of the site sold but Bennett Family retained the south half covering Lots 8 & part 9 of the Brighton Estate subdivision. South portion contained the house and the outbuildings along the Whistler Street boundary	Figure 8 in Full Circle Report
By 1918	40 [Belgrave St] McKormack, Mrs K, apartments [Shops to Belgrave Street frontage] No 44 Kleemo, E Butcher No 46 Bank of Queensland No 48 Sam Sing & Co, fruiterers	Sands 1918
1919	Mortgage taken out on the property & property transferred to the five Bennett children. Mortgage could reflect the redevelopment of the site	
1920	40 AC Camfield 40A McEwan, Douglas	Sands 1920

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Date	Item	Reference
	40A Gordon & Nichols 42 Field, Clifford 44 Davis, Sydney & Co 44* Klemo, E 46 Bank of Queensland 48 Sam Sing	
By 1923	21 Whistler Street noted as a separate address from 40/40a Belgrave Street	
1931	Additions and Alterations 40A Belgrave Street Removal of wine licence	CREJ 17 July 1931 SMH 5 June 1931
By 1936	Current commercial building on Belgrave Street frontage believed to have been constructed however this has not been confirmed by tenders. Rate books & BA files would confirm this	
1939	Sale of double fronted block comprising two double fronted shops and dwellings and cottage fronting Whistler Street	SMH 19 & 22 April 1939
1939	Entire property sold to Ernest Harman	
1940	Discussion of wine licence refers to demolition of premises at No. 40A. No date given	
1950	Property subdivided into its current form (Lots A & B DP 368451)	Figure 9 in Full Circle Report
1950	Pastry Shop, Blue Wren at 40 Belgrave Street	SMH 4 Feb 1950
1967	DA for alterations & additions to the cottage facing Whistler Street	Figures 10 & 11 in Full Circle Report
Between 1967 & 1975/6	Construction of two-storey addition at north end of original one-storey outbuilding	

The Full Circle Heritage report has already examined, through the Certificates of Title, the subdivision of the site which culminated in "Roseville"/"Restormel" and the outbuilding occupying the southern half of the original allotment amalgamated by Thomas Rowe. Our research shown in the foregoing tabulated Chronology, shows the intensification of use of the remaining southern section of the site through the construction of shops along the Belgrave Street frontage and the conversion of the house into flats before the shops and house were demolished to permit the construction of the current 1930s commercial building fronting Belgrave Street.

The documentary research indicates that the original rooms for the Kitchen and Wash House of "Roseville" remain within the current building at No. 21 Whistler Street. The kitchen fireplace in the original "Roseville" Kitchen has been bricked up, plastered over, and converted to a standard room fireplace (see Figures 5.7 & 5.8), probably when the addition to the south was constructed (by c.1890). The fireplace in that second kitchen shows physical evidence of it having been a kitchen fireplace (bricked up opening, mantel shelf position and height, etc) (see Figure 5.11).

The current Bathroom is located in part of the original space for the "Roseville" Wash House. The doorway from the original "Roseville" Kitchen into the current Hall passes through what was shown on the 1883 auction notice (see Figure 4.1) as the original location of the Wash House copper.

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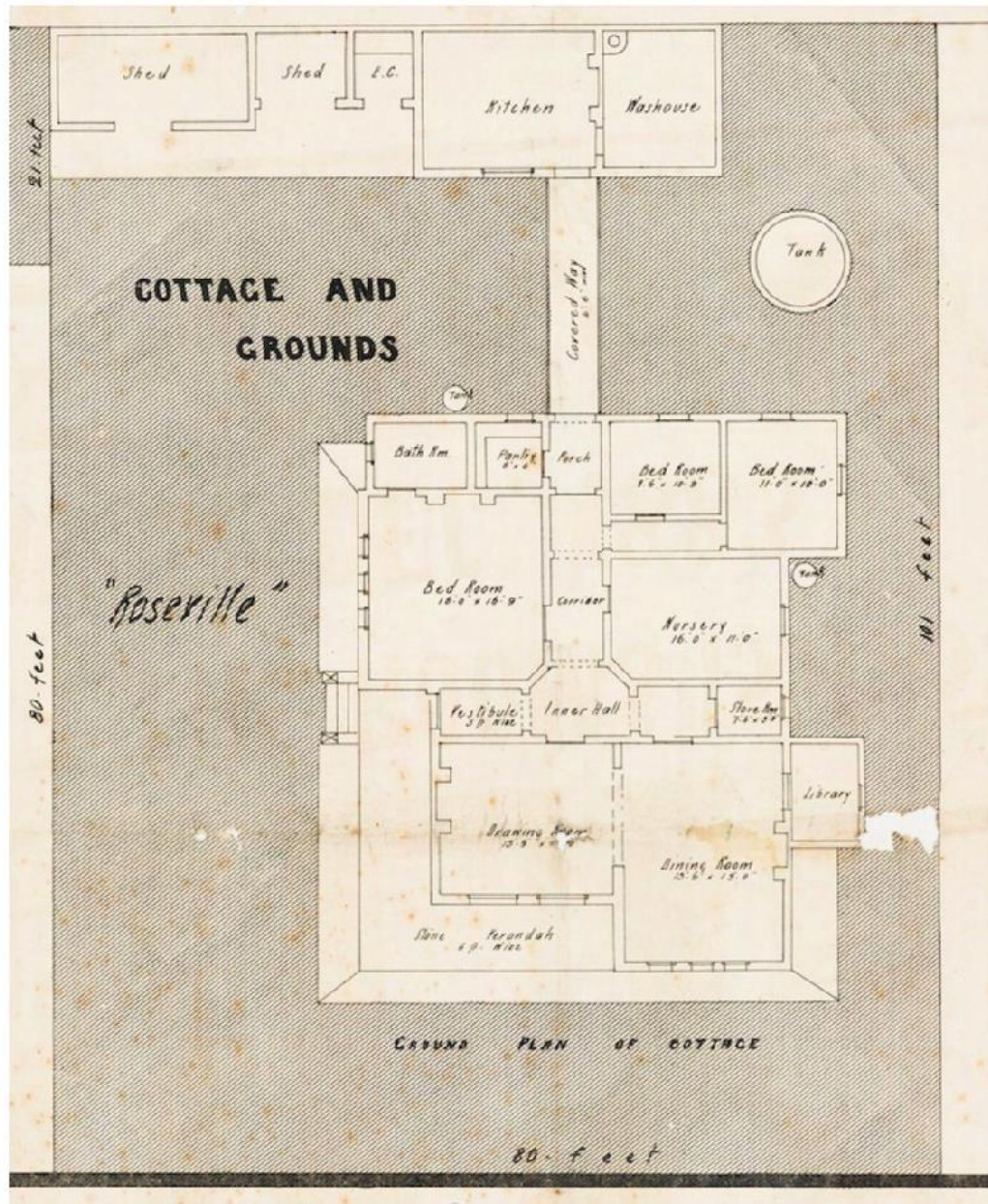


Figure 4.1: Plan of "Roseville" from the December 1883 auction notice. The plan indicates the location of the above-ground and underground water supply tanks as well as the configuration of the outbuilding with the Earth Closet. The underground tank may remain in-situ under the ground. The only part of the outbuilding still remaining is the section containing the spaces for the Kitchen and Wash House.

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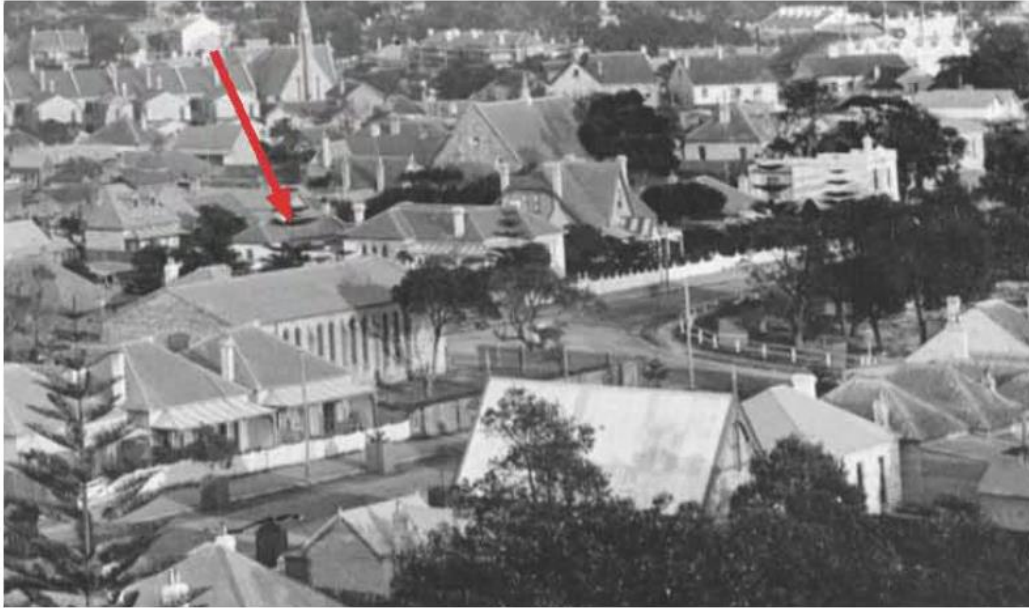


Figure 4.2: Outbuilding to "Roseville"/"Restormel" (now part of No. 21 Whistler Street) shown arrowed (Photo: Extract from Kerry & Co photograph, nd – but post-1890 as it shows the configuration of the outbuilding as shown on the 1890 MWS&DB Manly Detail Sheet 29). Note that the parapet wall on the south end of the outbuilding is still extant and indicates it was constructed on the southern boundary of the allotment for "Restormel".

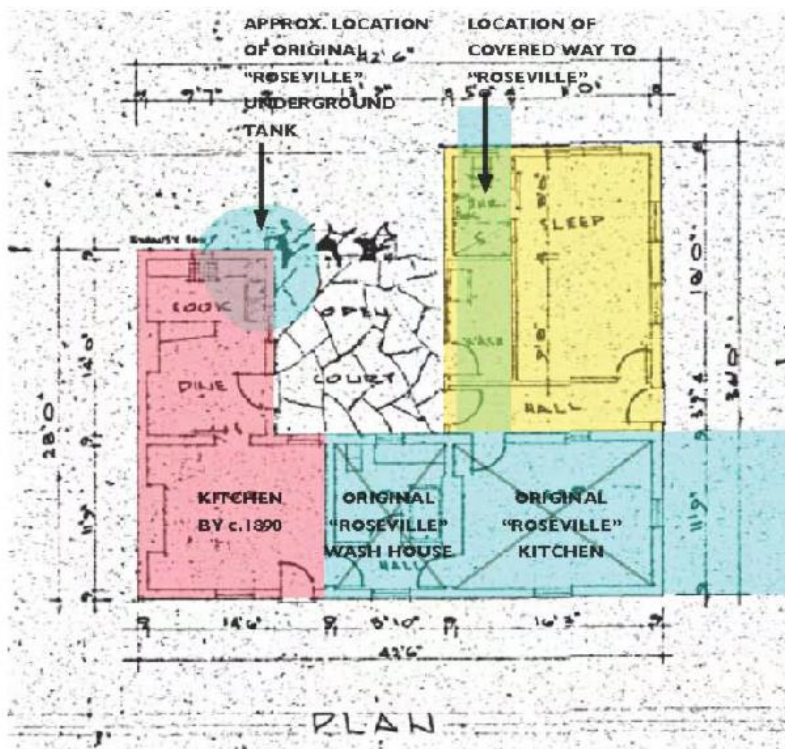


Figure 4.3: No. 21 Whistler Street as depicted in the 1967 plans for alterations and additions to the building. Blue = structures constructed by Thomas Rowe as a part of "Roseville" as shown on the 1883 auction notice at Figure 4.1, Red = structures added by c.1890 as shown on the MWS&DB Manly Detail Sheet 29 and in the Kerry & Co photograph at Figure 4.2, Yellow = additions proposed in 1967.

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5.0 Physical description

5.1 Exterior

No. 21 Whistler Street is located on the west side of the street in the block between Sydney Road & Raglan Street. The street in this block is undergoing transformation and upscaling through demolition and redevelopment of the existing properties (see Figures 5.1 to 5.3).

This physical description is based on an inspection of the exterior by one of the report authors on 1 July 2019 and the comprehensive photographs of the interior taken by Full Circle Heritage in April 2019.

The subject property comprises a number of phases of construction that have been partially elucidated in the report by Full Circle Heritage and in the earlier sections of this report. This report's Figure 4.3 depicts the important phases of development with regard to the extant fabric of the original Kitchen and Wash House. The current building comprises a single-storey section and a two-storey section at the north end of the one-storey section.

The initial one-storey building, constructed as a rear service wing to the main house, "Roseville", is located on the boundary line of the property fronting Whistler Street. When constructed, it defined the then rear boundary of the property that fronted Belgrave and Raglan Streets. The building is a brick building that has been rendered externally and has a gable roof currently covered with tiles with a masonry parapet wall at the south end of the building. There is the remnant stub of a chimney at the south end of the building abutting the parapet and an intact chimney two-thirds of the way along the ridge of the building. There are three double-hung timber windows and an entry door in the one-storey section of the building. These openings do not appear on the 1883 subdivision plan of the property.

At the north end of the building is a two-storey addition with a steel roller door and a recessed pedestrian door at street level and a steeply-pitched gable roof over the first-floor accommodation.

Single-storey additions have been made to the rear of the one-storey section of the building. One of these additions (the southern addition) appears on the 1890 MWS&DB Manly Detail Sheet, by which time "Roseville" was named "Restormel", and was probably constructed between 1883 and 1890 (see Figure 4.3). The southern rear addition was extended further after 1967. The northern single-storey rear wing was constructed in 1967 and the two-storey northern addition was constructed between 1967 and 1975/6. Further research of the Building Application files is necessary to pinpoint the exact date of construction and, combined with examination of the Rate Books, a more detailed sequence of buildings and occupants on the site can be determined.

Inspection of the street frontage demonstrates the documentary evidence is correct. The projecting foundation course extends part of the way along the Whistler Street frontage, indicating the extant extent of the original Kitchen and Wash House (see Figures 5.5 & 5.6). The projecting foundation course returns around the north end of the one-storey section, indicating the northern end of the building as seen in the Kerry & Co photograph (see Figure 5.4). The finished nature of this end of the building indicates that the section of the outbuilding containing the earth Closet and shed may have been of a lesser standard of construction and may not have been accommodated under an extension of the pitched roof. The Kerry & Co photograph shows a hip roof at the north end of the original Kitchen and the structural timbers for the hip end of the roof may still be intact within the existing roof. Likewise, the original south end of the building over the Wash House may have had a hip roof before the building was extended to the extent shown in the Kerry & Co photograph and those hip roof timbers may also be extant within the current roof.

The current windows in the Whistler Street façade do not appear in the 1883 plan of the house. The 1883 plan does show a window and door on the west side of the outbuilding in the original kitchen and so it can be assumed that there were no windows facing the lane on the rear boundary as the plan appears to accurately depict the doors and windows in the main house. This would be logical from a security point-of-view. The windows in the exterior wall would definitely have been installed by 1923 when No. 21 was first noted as a separate address. However, the joinery details of the windows would indicate a nineteenth century origin and so they were probably installed when the addition to the south of the original Wash House was made prior to 1890.

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Figure 5.1: Looking south along Whistler Street. No. 21 Whistler Street is in the middle distance on the right (R&H photo, 2019)



Figure 5.2: Looking north along Whistler Street. No. 21 Whistler Street is on the left in the far distance (R&H photo, 2019)



Figure 5.3: No. 21 Whistler Street viewed from the south (R&H photo, 2019)



Figure 5.4: No. 21 Whistler Street: north end of the foundation course returning along the north face of the building (R&H photo, 2019)



Figure 5.5: No. 21 Whistler Street: detail of foundation course terminating on the north side of the front door (R&H photo, 2019)



Figure 5.6: No. 21 Whistler Street: detail of foundation course terminating on the north side of the front door (R&H photo, 2019)

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Figure 5.7: Looking south from the front Bedroom to the Living Room through the Hall (Full Circle Heritage photo, 2019)



Figure 5.8: Fireplace in the front Bedroom which was formerly the original Kitchen. Note the original external door on right (Full Circle Heritage photo, 2019)

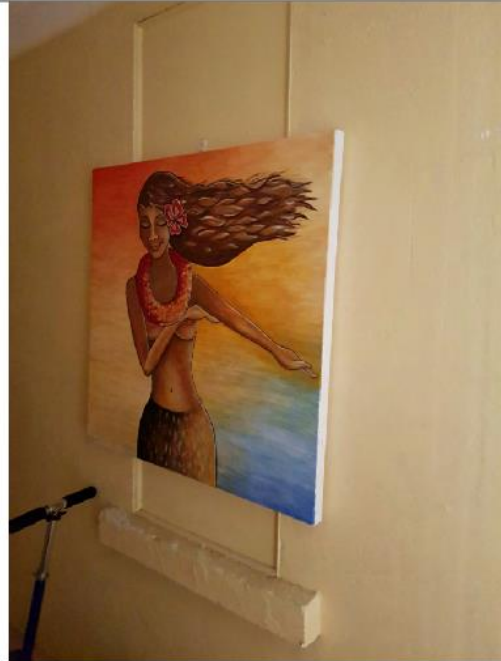


Figure 5.9: "Exterior" side of the window in the west wall of the front Bedroom which was the original kitchen window looking into the yard of "Roseville" (Full Circle Heritage photo, 2019)



Figure 5.10: Looking north along the Hall to the front Bedroom showing the tapering top of the rear of the original Kitchen fireplace (Full Circle Heritage photo, 2019)

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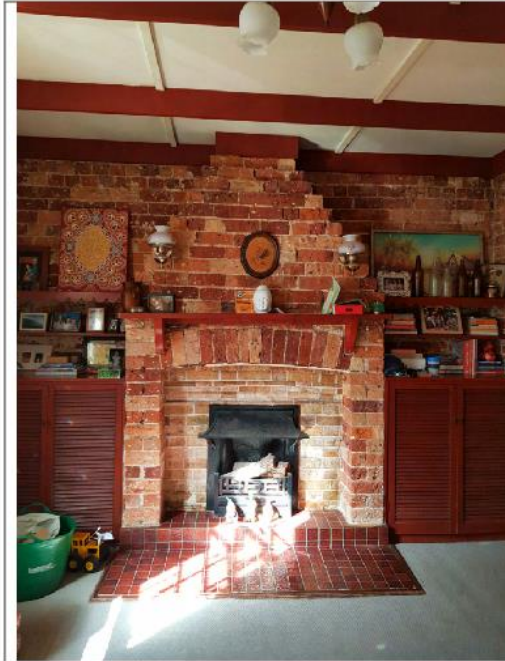


Figure 5.11: Living Room fireplace which was originally the second Kitchen fireplace. Note height of the mantel shelf and the fireplace opening. Also note the depth of the fireplace opening (Full Circle Heritage photo, 2019)

5.2 Interior

This description is limited to the nineteenth century rooms in the single-storey section of the building and is based on the photographs taken by Full Circle Heritage in April 2019.

There are two rooms in the existing building that survive from the time when the outbuilding contained the Kitchen and Wash House designed by Thomas Rowe for his villa, "Roseville". The existing front Bedroom at the north end of the single-storey section was the original Kitchen. The kitchen fireplace has been removed, the opening reduced in size and a smaller cast iron fireplace register and timber fire surround installed. The timber fire surround is of a style dating from the Victorian period and was probably installed when the building was extended to the south and the Kitchen moved into the new extension. The tiled hearth in front of the fireplace is unusually large and reflects the original hearth in front of the cooking fireplace. The bedroom also contains a door in the west wall and the timber door is an original panelled external door. This is the door that originally led into the covered way connecting the Kitchen to "Roseville". In the adjacent hall behind the bedroom's west wall is a blocked up window with a projecting masonry sill. This was the window depicted beside the Kitchen door in the 1883 plan of "Roseville" and its outbuildings. The 1967 plan (Figure 4.3) shows a window in the north wall of the front Bedroom and this window is also shown in the Kerry & Co photograph (indicating the window had been installed by c.1890).

No trace remains of the Wash House copper or other fixtures. The current Bathroom contains the projecting rear section of the original Kitchen chimney breast.

The fireplace in the current Living Room appears to have originally been a kitchen fireplace as indicated by the height and depth of the opening as well as the height of the timber mantel shelf. The size of the tiled hearth also indicates a past use as a Kitchen fireplace. This room was added by about 1890 and probably constituted a second Kitchen. The addition was made to the south of Rowe's Wash House and extended to the south boundary of the site (hence the use of a parapet wall end to the building to create fire separation). The remnants of plaster on the walls of this room indicate that it was originally plastered.

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6.0 Comparative Analysis

The brief required examination of four aspects of the building's design and history to inform any assessment of significance. The following aspects to be investigated stem from the brief:

6.1 The prevalence of Thomas Rowe buildings in the Manly area:

As additional historical research was excluded from this section of the project it must be noted that, without extensive research of Tender Notices, Rate Books and Building Applications, the extent of Thomas Rowe-designed buildings in Manly cannot be determined with any certainty.

Thomas Rowe was involved in the design of buildings and civic improvements from the late 1860s in Manly including public swimming baths, a public wharf and the planting of Norfolk Island pines. Whilst these features all survive, the configurations have largely been altered. He tendered works in his capacity as Mayor.

Rowe's son, Percival, who trained with his father, designed the now-demolished Oddfellows hall in 1878. Part of Redman's Terrace survives on East Esplanade and these terrace houses are similar in character to houses erected by Rowe as an investment in Victoria Street, Potts Point and are also thought to be his design (AIA Biography, Thomas Rowe).

In our quick perusal of Tender Notices the following Notices lodged by Thomas Rowe were uncovered. They consisted of three villas, one cottage (probably "Roseville"), alterations to two residences and a pair of semi-detached houses. It should be noted that their location cannot be determined without additional research.

1873:
SMH, 4 April 1873
First Class Villa Residence (see below)

SMH, 10 April 1873
Villa Residence at Manly Beach for A Forsyth Esq
1. Excavation & Masons Work & Brickwork
2. Carpenters, Joiners and Finish Trades
3. The whole in one sum
Location not able to be identified. Probably for Archibald Forsyth.

1875:
SMH 19 October 1875
Tender for the erection of a cottage, Manly Beach
Masons and Bricklayers Work
["Roseville" ?]

1876:
SMH 21 Feb 1876
Plastering & Cementing a Cottage, Manly Beach
["Roseville" ?]

SMH 28 September 1876
Erection of a villa residence, Manly Beach
1. Excavation & Masons Work
2. Carpenters, Joiners and Finish Trades
3. The whole in one sum
[unidentified]

1877:
SMH 1 June 1877 & others
Erection of a villa residence, Manly Beach
1. Excavation & Masons Work
2. Carpenters, Joiners and Finish Trades
3. The whole in one sum
[unidentified]

SMH 7 June 1877
rebuilding of Brighton Villa after a fire

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[Possibly Brighton Cottage in Whistler Street in Sands, 1876,
occupied by J Gould, Builder]

1878:
SMH 30 Jan 1878
Restoration additions to Hope Lodge, Manly

1879:
SMH 15 September 1879
Two semi-detached weatherboard cottages at Manly Beach
[possibly 80-82 Pittwater Road – architect for these heritage items not identified]

1881:
SMH 20 June 1881
Residence at Manly Beach for Rev RS Wills
by Percival CK Rowe. Plans at Thomas Rowe's office

SMH 20 June 1881
Erection and Completion of a Villa at Manly Beach for James Todd, Esquire
by Percival CK Rowe. Plans at Thomas Rowe's office

Of these buildings tendered by Thomas Rowe, the pair of semi-detached cottages at 80-82 Pittwater Road might be the 1879 building that is already listed on Schedule 5 of the LEP, but their design is a typical Victorian period design and not easily attributable to Rowe through any of the details.

Rowe also tendered for the rebuilding of Brighton Villa after a fire in 1877 (SMH 7 June 1877) and the erection of a villa at Manly (SMH 23 June 1877). Substantial villas at Manly were also designed by other architects who lived locally including [John] Smedley after whom Smedley's Point is named.

The above-mentioned tenders from the Rowes probably represent a substantial portion of the houses erected in Manly during this era but again, this cannot be determined without extensive additional research (eg searching all tenders for Manly Beach). Given the number of listed buildings in Manly from the 1870s, it would seem that the majority of Rowe's work in the area no longer survives but the research simply has not been done. These buildings are likely to be on the Whistler Street side of The Corso, as the south side of The Corso was subdivided later.

Rowe also designed residences in Darlinghurst, Marrickville, Burwood, Elizabeth Bay and on the North Shore during the late 1860s and 1870s. Many of these have not been identified as his work but may have been listed without the architect having been identified. The majority of his projects that are listed are, like those in his obituary, his public buildings, churches and hospitals. A detailed examination of his domestic designs is sorely needed. His contribution to sanitary reform and the improvement in building construction standards whilst an Alderman for the City then Manly councils has not been identified either.

6.2 How this building compares with other remaining Thomas Rowe buildings still in existence:

The c. 1890 Metropolitan block plans show the layout of the villa subdivision at Elizabeth Bay and the layout of "Roseville" (by then named "Restormel") at Manly. The two substantial Gentleman's villas that Rowe designed and lived in at Elizabeth Bay – "Tresco" (c. 1869) and "Caprera" (c. 1877) both survive today and are listed on the State Heritage Register whereas, what survives of "Roseville" at Manly, which the Rowe family occupied between these two residences, is not listed. The sequence of tenders indicates that Rowe also altered the houses for later owners so the later works to "Roseville" in the mid-1880s may have also been his work. It would appear that the Rowe family occupied the villas, for a while, if the houses he designed and built had not been sold or leased. However, the move back to Manly may also have been for health reasons, possibly that of his first wife who died young. As a result, the sequence of family residences, the full extent of which has not been determined, is of significance in that it demonstrates his expanding family and also his increasing wealth and status, eventually resulting in his move to "Mona" in Darling Point.

What survives of the villa subdivision at Elizabeth Bay has been identified as being of state significance, with the two houses that the Rowe family occupied listed on the State Heritage Register. The full extent of the survival of the villa subdivisions from the 1870s in Sydney has not been studied, however most were in waterfront suburbs or on riverbanks (ie Elizabeth Bay, Potts Point, Hunters Hill and Manly). All of this housing stock is in private ownership so the service wings have been altered.

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There has not been a monograph prepared on the work of Thomas Rowe. The works listed in the various obituaries are only the commercial buildings (with some churches and synagogues). None of his residential work is listed in those obituaries.

6.3 How this building compares with the other mid-late Victorian era buildings in the Manly Town Centre:

Comparison with other mid- to late-Victorian buildings surviving in the Manly Town Centre is difficult since the subject property was constructed as a kitchen and service block for a much grander house and not as a stand-alone house, even though that is now what it is. As a service building designed to be concealed behind the main building the subject building is aesthetically simple, unadorned, functional and utilitarian. There is no architectural style or pretence. In its simplicity it resembles the simple houses found in areas such as The Rocks and other colonial settlements in the colony in the early years of the nineteenth century (albeit with Victorian details) and the surviving outbuildings for substantial houses from the 1870s.

Having designed a number of hospitals, Thomas Rowe was well aware of the current theories regarding the spread of disease. In the design of a hospital according to the principles set by Florence Nightingale, such as the Catherine Hayes Hospital and the Sydney Hospital, the sanitary areas were separated from the wards by breezeways. In the design of his cottage at Manly, Rowe created a separate block for the kitchen, washhouse and earth closet. This was a common feature in houses of the 1840s but not of the 1870s, by which time the kitchen was usually accommodated in a rear wing. This concern may have been due to the low-lying site of "Roseville" and, more likely, the lack of any town services. There was no town water supply or piped sewerage system in the Manly area so the separation of the noisome cooking and toilet facilities from the house was based on considerations of health and sanitation. As Mayor, Rowe introduced by-laws that forbade the use of cesspits and so the use of an earth closet and a distant underground water cistern were practical demonstrations of the by-laws in action.

None of the other houses identified as having been the work of Thomas Rowe, including the villas in Elizabeth Bay have a separate service block connected by a covered way, indicating that the outbuildings of these houses were stables etc. This is likely to relate to the lack of any municipal services such as town water or sewerage in Manly and their availability elsewhere, such as at his Elizabeth Bay subdivision and houses. The 1883 plans for the house show tanks and an earth closet, as there was no town water supply during the 1870s.

6.4 How this building compares with other outbuilding/domestic service buildings remaining in Manly:

Because of the peculiarity of Whistler Street functioning as a rear lane for the Belgrave Street properties any outbuildings are clearly visible from Whistler Street. Most other outbuildings of this nature in other locations within the Manly Town Centre would not be readily visible from public streets because of the lack of rear lanes/streets near which such buildings would normally be constructed. In this case, the property is of significance as it demonstrates the layout that was to become enshrined in municipal by-laws, ie the use of earth closets and not cesspits, and the ability to empty the earth closets from a lane and not through the house.

Rowe, as an Alderman, was responsible for sanitary reforms in Sydney and the introduction of by-laws in Manly requiring Earth Closets. His own residence was a model installation prior to the existence of the municipal by-laws imposed during his term in office. The surviving plans show the location of the earth closet as being within the portion of the out building that no longer survives. The by-laws required that closets had to be emptied via a lane and not through the house, however, the villa subdivisions of Manly are without rear lanes.

Manly's municipal by-laws were published in the NSW Government Gazette in January 1878 and are signed by Thomas Rowe as Mayor. What survives of "Roseville" still partially demonstrates these municipal reforms that Rowe was to implement across the entire municipality. In comparison with other municipalities' by-laws the Manly provisions are stricter, with no cesspits permitted and greater separation between closets to prevent the spread of disease.

In order to uncover any similar outbuildings constructed in the rear yards of properties not visible from public streets, the method used to assess this aspect of the subject building's significance was to examine all 35 of the 1890 MWS&DB Detail Survey Sheets for Manly (supplied by Manly Library) looking for outbuildings and then comparing those detail sheets to the current aerial views of the Manly Town Centre (available through Google Earth and also SIX Maps). This comparison should have highlighted any extant 1890 outbuildings in the area covered by the 1890 plans. The area covered by the 1890 plans was the area bounded by the Quarantine Reserve in the south, Manly Lagoon (originally known as Curl Curl Lagoon) in the north, the Pacific Ocean in the east, and Hill Street, Fairlight in the west.

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This comparative survey using the 1890 plans and the current aerial photographs of the area concluded that no large pre-1890 outbuildings, other than the subject building at 21 Whistler Street, remain in the Manly Town Centre. Small outbuildings, such as outhouses, may remain but they were too small to see on the current aerial photographs. In Manly there are very few listed buildings erected between the 1850s when the suburb was first laid out as a villa subdivision and 1875 when "Roseville" was built. The heritage listings include a pair of Gothic Revival style houses at 80-82 Pittwater Road, (1202 and 203), a Gothic Revival Style villa at 226 Pittwater Road (1212) and a large house (now subdivided) on land once owned by Rowe (possibly Dun Aros II 15). The architect of these buildings has not been identified on the listings, however, at least one of the buildings is probably Rowe's work. He may have sold the land he owned with a design. The semi-detached timber houses could be the work of Rowe but could also be designed by the architects Thomley and Smedley or Benjamin Backhouse who also undertook work in the area.

7.0 Assessment of Heritage Significance

The criteria used to assess the significance of this property are the criteria contained within the 2001 NSW Heritage Office publication, *Assessing Heritage Significance*, which were gazetted in April 1999. Contained within that publication are guidelines to assist in determining whether an item or place could be included or should be excluded from listing as a heritage item at either the State or Local levels.

7.1 Application of the Assessment Criteria to 21 Whistler Street, Manly

The following section analyses the elements of No. 21 Whistler Street that do and do not meet the NSW Heritage Council's criteria for heritage listing.

Criterion (a) An item is important in the course, or pattern, of NSW's cultural or natural history (or the cultural or natural history of the local area).

Guidelines for INCLUSION

- shows evidence of a significant human activity
- is associated with a significant activity or historical phase
- maintains or shows the continuity of a historical process or activity

Guidelines for EXCLUSION

- has incidental or unsubstantiated connections with historically important activities or processes
- provides evidence of activities or processes that are of dubious historical importance
- has been so altered that it can no longer provide evidence of a particular association

Discussion:

No. 21 Whistler Street, Manly dates from a significant phase in the development of New Brighton (later Manly), prior to the formation of the municipality, as a villa suburb, with the quality of the building stock controlled by the scale of the lots in the subdivision. This remnant of "Roseville" is a physical demonstration of the series of substantial speculative suburban villas set in large grounds designed and erected for professional men by Thomas Rowe within villa subdivisions during the 1860s and 1870s, including "Tresco" and "Villa Caprera" in Elizabeth Bay and "Roseville" at Manly. Thomas Rowe's examples at Elizabeth Bay are listed on the State Heritage Register.

This remnant of the New Brighton Estate is significant in terms of its rarity and for its historical significance as a physical remnant of this period of villa development in Manly.

The underlying significance of this remnant of "Roseville" is that the separation of the kitchen, washhouse and earth closet facilities in a separate wing, connected by a covered walkway to the main house, demonstrates the architect's, Thomas Rowe's, attention to the requirement for health and sanitation in an urban location that did not have any municipal services such as a piped water supply or a piped sewerage system. In order to ensure health, he eschewed the usual cesspit so that there was no cross-contamination between the contents of the cesspit and the underground water storage cistern that was required to ensure drinking and bathing water. Whilst such a separation may seem to be anachronistic it, in contrast, was very much concerned with the future health of the inhabitants of Sydney. As the first Mayor of Manly, Thomas Rowe drafted and introduced by-laws that enshrined the practice he pioneered at "Roseville" in banning cesspits and requiring the use of earth closets that had to be serviced from a rear street or service lane (and not through the house).

In addition, the separation of the kitchen from the main house not only kept cooking smells out of the house but also restricted any possible spread of fire from the Kitchen to the main house. However, no above-ground physical evidence remains of the earth closet and no evidence of the original Kitchen remains (other than the

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room volume, door, window, chimney breast, hearth and chimney). Likewise, no physical evidence of the Wash House remains other than the room volume. Evidence may remain of the underground water tank/cistern

Significance:

No. 21 Whistler Street, Manly is associated with a significant phase in the development of New Brighton (later Manly), prior to the formation of the municipality, as a villa suburb, with the quality of the building stock controlled by the scale of the lots in the subdivision. This remnant of the New Brighton Estate is of Local Significance in terms of its rarity and for historical significance.

The remnant of "Roseville" demonstrates the series of substantial speculative suburban villas set in large grounds designed and erected for professional men by Thomas Rowe within villa subdivisions during the 1860s and 1870s, including "Tresco" and "Villa Caprera" in Elizabeth Bay and "Roseville" at Manly.

Conclusion:

No. 21 Whistler Street meets the requirements for the criterion of historical significance because it:

- shows evidence of a significant human activity
- is associated with a significant activity or historical phase

Criterion (b): An item has strong or special association with the life or works of a person, or group of persons, of importance in NSW's cultural or natural history (or the cultural or natural history of the local area).

Guidelines for INCLUSION

- shows evidence of a significant human occupation
- is associated with a significant event, person, or group of persons

Guidelines for EXCLUSION

- has incidental or unsubstantiated connections with historically important people or events
- provides evidence of people or events that are of dubious historical importance
- has been so altered that it can no longer provide evidence of a particular association

Discussion:

No. 21 Whistler Street, Manly was designed by architect, Thomas Rowe. Rowe was a prominent architect in the mid- to late-nineteenth century who championed the construction of healthier urban environments and the construction of urban service infrastructure such as piped water supply and piped sewerage services. After petitioning the government to establish the Municipality of Manly and, as the first Mayor of Manly, Rowe wrote and promulgated by-laws that encapsulated his pioneering work on health and sanitation. His house, "Roseville", incorporated these principles and was a working example of those principles. The remnant of "Roseville" at No. 21 Whistler Street is the physical manifestation of part of that important section of the house demonstrating Rowe's health and sanitation principles, (ie the separate kitchen, washhouse and earth closet facilities).

Thomas Rowe was also instrumental in the establishment of the Institute of Architects of NSW (the precursor of the Royal Australian Institute of Architects).

Significance:

No. 21 Whistler Street, Manly is associated with a significant human occupation (ie the provision of healthy urban environments) as well as with a significant person, Thomas Rowe, the first Mayor of Manly, and one of the founders of the Institute of Architects.

Conclusion:

No. 21 Whistler Street meets the requirements for the criterion of historical association significance because it:

- shows evidence of a significant human occupation
- is associated with a significant person

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Criterion (c): An item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in NSW (or the local area).

Guidelines for INCLUSION

- shows or is associated with, creative or technical innovation or achievement
- is the inspiration for a creative or technical innovation or achievement
- is aesthetically distinctive
- has landmark qualities
- exemplifies a particular taste, style or technology

Guidelines for EXCLUSION

- is not a major work by an important designer or artist
- has lost its design or technical integrity
- its positive visual or sensory appeal or landmark and scenic qualities have been more than temporarily degraded
- has only a loose association with a creative or technical achievement

Discussion:

Along with George Allen Mansfield, Thomas Rowe was one of the two leading designers of substantial residential buildings in Sydney during the 1870s, both of whose work had become known throughout the Pacific (Rowe having won the limited competition to design the royal palace in Honolulu for the Kingdom of Hawaii).

Rowe was known for housing improvements and as a designer of hospitals and for his concerns regarding fireproof construction, sanitation and water supply. He served as an Alderman on both Sydney and Manly Councils and as a member of the Metropolitan Water, Sewerage and Drainage Board. In particular, the sanitary improvements included in the 1875 design for "Roseville" such as earth closets and separate street or lane access for night soil removal was implemented throughout the Municipality via the by-laws drawn up by Thomas Rowe as Mayor of Manly. Normally the sanitary arrangements of a residence are not of significance, however, in this case Rowe implemented reforms in Sydney (overhead cisterns) and in Manly (earth closets in place of cesspits) aimed at limiting the spread of disease. This remnant of "Roseville" still has the ability to demonstrate how the residence functioned in an urban environment without the usual urban infrastructure.

For its contribution to the streetscape and as a remnant of a well-known landmark property in Manly, the residence of the first Mayor of Manly, Thomas Rowe, from 1877-78 is a significant remnant of a distinct architectural phenomenon (Victorian villas for professional men). Prior to the formalisation of street numbers, the villas subdivision to the north was referred to as being near Thomas Rowe's residence. The majority of the surviving residential buildings on the flat land at Manly are small workers cottages or semi-detached houses or terraces.

Almost no trace of the mid-1850s to 1870s villa subdivisions of New Brighton survives. Although it is only the outbuilding that survives, this appears to be the largest surviving remnant in the Manly Town Centre area, demonstrating the subdivision alignment and the villas erected thereon and can be correlated to the Charles Kerry photograph held in the Powerhouse Museum.

Significance:

No. 21 Whistler Street, Manly is associated with a significant technical achievement (ie the provision of healthy urban environments in the absence of an urban services infrastructure) as well as with a significant person, Thomas Rowe, the first Mayor of Manly and one of the founders of the Institute of Architects.

Conclusion:

No. 21 Whistler Street meets the requirements for the criterion of technical significance because it:

- shows or is associated with, creative or technical innovation or achievement
- is the inspiration for a creative or technical innovation or achievement

Criterion (d): An item has strong or special association with a particular community or cultural group in NSW (or the local area) for social, cultural or spiritual reasons.

Guidelines for INCLUSION

- is important for its associations with an identifiable group
- is important to a community's sense of place

Guidelines for EXCLUSION

- is only important to the community for amenity reasons
- is retained only in preference to a proposed alternative

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No. 21 Whistler Street does not meet the guidelines for inclusion under Criterion (d).

Criterion (e): An item has potential to yield information that will contribute to an understanding of NSW's cultural or natural history (or the cultural or natural history of the local area).

Guidelines for INCLUSION

- has the potential to yield new or further substantial scientific and/or archaeological information
- is an important benchmark or reference site or type
- provides evidence of past human cultures that is unavailable elsewhere

Guidelines for EXCLUSION

- the knowledge gained would be irrelevant to research on science, human history or culture
- has little archaeological or research potential
- only contains information that is readily available from other resources or archaeological sites

No. 21 Whistler Street does not meet the guidelines for inclusion under Criterion (e).

Criterion (f): An item possesses uncommon, rare or endangered aspects of NSW's cultural or natural history (or the cultural or natural history of the local area).

Guidelines for INCLUSION

- provides evidence of a defunct custom, way of life or process
- demonstrates a process, custom or other human activity that is in danger of being lost
- shows unusually accurate evidence of a significant human activity
- is the only example of its type
- demonstrates designs or techniques of exceptional interest
- shows rare evidence of a significant human activity important to a community

Guidelines for EXCLUSION

- is not rare
- is numerous but under threat

Discussion:

No. 21 Whistler Street is the only remaining large service outbuilding remaining in the Manly Town Centre from the villa phase of development in Manly. It is rare as a service wing from the mid- to late-nineteenth century that demonstrates the pattern of urban settlement at a period when urban services had not been provided and it demonstrates the requirement to separate toilet facilities from the habitable rooms of the main house, the requirement to collect earth closet waste via a "night soil" lane, and the necessity of separating the toilet facilities from the water collection and storage infrastructure.

Furthermore, it demonstrates at a domestic scale, the attention to fire-proofing that architect, Thomas Rowe, incorporated into his projects by virtue of physically separating the fire-prone kitchen area from the main house.

Significance:

No. 21 Whistler Street, Manly is rare as the only large nineteenth century outbuilding surviving in the Manly Town Centre and is rare as a physical manifestation of a way of life that has been made redundant by the provision of piped water supply and piped sewerage service to urban areas.

Conclusion:

No. 21 Whistler Street meets the requirements for the criterion of rarity because it:

- provides evidence of a defunct custom, way of life or process with regard to the provision of water and the removal of waste
- is the only example of its type remaining in the Manly Town Centre area

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Criterion (g): An item is important in demonstrating the principal characteristics of a class of NSW's

- cultural or natural places; or
- cultural or natural environments

(or a class of the local area's

- cultural or natural places; or
- cultural or natural environments).

Guidelines for INCLUSION

- is a fine example of its type
- has the principal characteristics of an important class or group of items
- has attributes typical of a particular way of life, philosophy, custom, significant process, design, technique or activity
- is a significant variation to a class of items
- is part of a group which collectively illustrates a representative type
- is outstanding because of its setting, condition or size
- is outstanding because of its integrity or the esteem in which it is held

Guidelines for EXCLUSION

- is a poor example of its type
- does not include or has lost the range of characteristics of a type
- does not represent well the characteristics that make up a significant variation of a type

No. 21 Whistler Street does not meet the guidelines for inclusion under Criterion (g).

7.1.2 Statement of Significance (No 21 Whistler, former Kitchen Wing of "Roseville")

The surviving kitchen wing of Thomas Rowe's "Roseville" is of at least local significance as a remnant of one of the series of gentlemen's residences designed and erected by Rowe in villa subdivisions in Manly and Elizabeth Bay and occupied by his family namely "Tresco" (1869), "Roseville" (1875) and "Caprera" (c. 1877, occupied c.1880-1884). In contrast to the other two residences, it is the service wing that remains in this case and the surviving physical and documentary evidence indicates the sanitary reforms that Rowe would subsequently implement across the entire Municipality of Manly during his term as the first Mayor.

Rowe's "Roseville" was a well-known local landmark and the vestige that remains in Whistler Street is one of the few remaining physical reminders of the intended villa development of New Brighton which was developed from the mid-1850s until the mid-1870s. The alignment to Whistler Street provides evidence of the lots created for the villa subdivision of New Brighton, which fronted East Promenade. Prior to the implementation of planning controls the villa subdivisions were controlled by the size of the lots and the architectural scale and character of the residential architecture.

The surviving portion of "Roseville" in Whistler Street, Manly is a remnant of the extensive body of residential architecture by Thomas Rowe that included both residences for professional men and terraces built as investments. The full extent of his body of residential work, including the houses he designed on a speculative basis, has not yet been examined in detail. Rowe's involvement as an Alderman developing and implementing reforms in sanitation and building standards in Sydney and Manly sets his work apart from that of his main contemporaries.

This remnant example is the only 1870s residence designed by Rowe that has been identified in which the service wing remained separate for health reasons, indicating the lack of town water and sewerage that existed prior to the formation of the municipality and the public and civil engineering works for which successive mayors, starting with Rowe, agitated.

The design of "Roseville" was a model of how water could be collected for domestic use and sanitary arrangements made in the absence of reticulated water supply and piped sewerage. The location of the service wing on the lane is indicative of the need for night soil collection to be undertaken without passing through the residence. At Rowe's insistence, cesspits were banned by municipal by-law and the surviving plans of "Roseville" demonstrate the use of earth closets which were permitted as an improvement on cesspits.

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8.0 Conclusion and Recommendations

The previous rationale for not listing the building in 2007 was an assessment of its physical fabric, without picking up the association with the first Mayor of Manly, Thomas Rowe, or that it formed part of the outbuilding complex of a large villa he designed for his family that faced Belgrave Street and the park. Very little survives of Rowe's body of work in Manly undertaken between c. 1868 and 1890.

It is our opinion that No. 21 Whistler Street (the former outbuilding of "Roseville", later "Restormel") meets the criteria for listing as a Local item of environmental heritage under the Northern Beaches LEP under the following criteria:

- Historical significance
- Associative significance
- Aesthetic/Technical significance
- Rarity

As part of the listing process, a more thorough history should be prepared utilising the Rate Books and Building Application Registers to determine the sequence of buildings on the site and owners of the site.

In addition, we recommend that further research be undertaken regarding the interwar building fronting Belgrave Street as it was an integral part of the site until 1950 when the site was subdivided into its current form of two allotments. This building also has the potential to be a heritage item, as it demonstrates the intensification of development and expansion of the commercial centre of Manly.

Dr Scott Robertson
for
Robertson & Hindmarsh Pty Ltd