

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL MEETING

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

WEDNESDAY 17 OCTOBER 2018

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



Peter Robinson
Executive Manager Development Assessment

Panel Members

Peter Biscoe	Chair
Brian Kirk	Town Planner
Robert Hussey	Town Planner
Ray Mathieson	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

**Agenda for a Meeting of the Northern Beaches Local Planning Panel
to be held on Wednesday 17 October 2018
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 3 OCTOBER 2018

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 3 October 2018 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1	DA2018/1329 - SYDNEY ROAD, MANLY - DEMOLITION WORKS AND CONSTRUCTION OF A NEW SCOREBOARD ASSOCIATED WITH A RECREATION AREA (MANLY OVAL)
REPORTING OFFICER	Rodney Piggott
TRIM FILE REF	2018/645446
ATTACHMENTS	1 Assessment Report 2 Plans

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the applicant/land owner is the Council.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approve** Application No. DA2018/1329 for Demolition works and construction of a new scoreboard associated with a recreation area (Manly Oval) at Lot 7379 DP 1164856, Sydney Road, Manly subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1329
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 7379 DP 1164856, 0 Sydney Road MANLY NSW 2095
Proposed Development:	Demolition works and construction of a new scoreboard associated with a recreation area (Manly Oval)
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:	Northern Beaches Council
Applicant:	BBF Town Planners
Application lodged:	10/08/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Other
Notified:	17/08/2018 to 31/08/2018
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	Approval
Estimated Cost of Works:	\$ 96,544.00

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 3.1 Streetscapes and Townscapes

Manly Development Control Plan - 3.2 Heritage Considerations

SITE DESCRIPTION

Property Description:	Lot 7379 DP 1164856 , 0 Sydney Road MANLY NSW 2095
Detailed Site Description:	<p>The Oval is within the recreation area known as Ivanhoe Park on which are other sporting facilities including a tennis courts and lawn bowling greens. The area of the Oval is some 2000m².</p> <p>The subject site It is located between Raglan Street and Sydney Road and to the West of Belgrave Street</p> <p>The site has a surveyed area of 23,474m².</p> <p>The site is located within the RE1 Public Recreation zone.</p> <p>The site is a Local heritage item under the Manly LEP Item 122: Ivanhoe Park (bounded by Sydney Road, Belgrave Street and Raglan Street).</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a mixture of open space, business and residential areas with predominantly residential development on the southern and northern side and commercial/business uses to the east across Belgrave Street.</p>

Map:



SITE HISTORY

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

DA116/2016- Construction of a two (2) level underground carpark for approximately five hundred (500) vehicles, including disabled space bicycles and motor cycles space- Manly Oval. (Withdrawn 10 May 2016)

DA151/2009- Removal of existing lighting towers and construction of four (4) new lighting towers on Manly Oval (Approved MIAP 15/5/2009)

DA246/2002- Relocation of Open Space Project (Approved by Council 13 June 2002).

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for demolition of existing structures and construction of a new electronic (LED) scoreboard at Manly Oval.

The works proposed are on Council land.

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments

Section 4.15 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>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This 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 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 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 Matters for Consideration'	Comments
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	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 1 submission/s from:

Name:	Address:
Mr Duncan Anderson	1 Kangaroo Street MANLY NSW 2095

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

- **Impact of light and hours of operation.**

The matters raised within the submissions are addressed as follows:

- **Impact of light**

Comment:

Concern was raised in regards to the hours of operation of the scoreboard relating to glare and illumination at night.

The applicant stipulated in the statement of environmental effects lodged with the application that the scoreboard will only be used during sporting fixtures. To further ensure that the proposal will not give rise to any adverse impacts upon residential amenity a condition has been imposed to only allow the use/illumination of the scoreboard between the hours of 7am and Midnight.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposed new electronic scoreboard will be housed within the existing scoreboard structure. The size and location of the overall scoreboard structure will not be altered.</p> <p>The scoreboard will be above the Flood Planning Level.</p> <p>No flood related objections.</p>
Strategic and Place Planning (Heritage Officer)	<p>The site is part of Ivanhoe Park, listed as a heritage item.</p> <p>The item is described in State Heritage Inventory as: "Site of Manly Flower Show and early open space planned as a Resort element by HG Smith.</p> <p>Major association with the development of trams/transport in Manly, and indicates the way steep terrain was traversed when suitable public roads were not available.." and "Open space, oval cricket ground and picket fence with memorial gateway. Upper slopes now Ivanhoe Park - passive recreation area with mature trees, both indigenous and cultural. Eucalyptus sp., Ficus sp. And Araucaria Heterophylla"</p> <p>The affected structures and areas are not of heritage interest.</p> <p>Based on this, I have no objection to this proposal from heritage perspective.</p> <p>Kind Regards Zoran Popovic</p>

External Referral Body	Comments
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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 - (SEPP Infra. Traffic generating dev)	The proposal was referred to Road and Maritime Services (RMS). The RMS raised no objection to the proposal, subject to conditions. A condition has been included in the recommendation of this report requiring compliance with the conditions indicated in the referral response.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for recreational 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 recreational land use.

SEPP 64 - Advertising and Signage

Clauses 8 and 13 of SEPP 64 require Council to determine consistency with the objectives stipulated under Clause 3(1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 1.

The objectives of the policy aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 1 of SEPP 64, the following assessment is provided:

Matters for Consideration	Comment	Complies
1. Character of the area	The scoreboard is compatible with the desired	YES

Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	future character of the site as a oval being used by numerous local sporting clubs.	
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	An electronic scoreboard is suitable for this site in its regular use by sporting clubs.	YES
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The scoreboard and adjoining existing structures have no heritage significance. The impact of the proposal on the heritage significance of the site is negligible.	YES
3. Views and vistas Does the proposal obscure or compromise important views?	No important views to and from public vistas will be unreasonably compromised by the proposed development.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The development will match the height of the existing scoreboard with the maximum height being 4.6m above ground level. Given the height of surrounding buildings the scoreboard is unlikely to reduce the dominate the skyline and the quality of vistas.	YES
Does the proposal respect the viewing rights of other advertisers?	The proposed scoreboard will not compromise other existing signage/advertising with the Ivanhoe Park area.	YES
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	An electronic scoreboard being used for sporting fixtures with a scale that matches the existing structure in a recreation zone is appropriate.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The development will have no unreasonably impact upon the streetscape and setting.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The development replaces the existing scoreboard. The development will not result in additional clutter.	YES
Does the proposal screen unsightliness?		YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposal does not protrude above building, structures or tree canopies. The scoreboard matches the existing height of scoreboard.	YES
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The scoreboard matches the existing height of scoreboard. There is no unreasonable additional bulk proposed.	YES
Does the proposal respect important	The development will still allow for oval to be the	YES

features of the site or building, or both?	primary feature of the site	
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	Upgrading of the existing scoreboard to an electronic scoreboard shows innovation and progression in its relationship to the site.	YES
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	The existing access stairs to scoreboard structure and flood light to the north-west will remain as part of this proposal.	YES
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	The scoreboard is directly orientated towards Manly Oval. Going by the orientation of the scoreboard, only Sydney Road would be directly impacted. It is considered however that physical separation between the scoreboard and Sydney Road is greater than 100m. The scoreboard is unlikely to result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation	YES
Can the intensity of the illumination be adjusted, if necessary?	Illumination of the scoreboard can be adjusted.	YES
Is the illumination subject to a curfew?	A condition has been imposed to limit the operation (illumination) of scoreboard from 7am to 12am Monday To Sunday.	YES
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The scoreboard is not in the close vicinity of any public road, pedestrians or bicyclists.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The scoreboard is largely the same size of the existing scoreboard. The development would not obscure and existing sightlines to public areas.	YES

Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of the SEPP and its underlying objectives.

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	Proposed	% Variation	Complies
Height of Buildings:	Not applicable.	4.6m	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
Schedule 5 Environmental heritage	Yes

Manly Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	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

Detailed Assessment

3.1 Streetscapes and Townscapes

Merit consideration:

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

Objective 1) To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.

Comment:

Not applicable.

Objective 2) To assist in maintaining the character of the locality.

Comment:

The new scoreboard will ensure the ongoing use of the subject site as a public recreation area for sporting teams. This assists in maintaining the character of Manly.

Objective 3) To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.

Comment:

Not applicable.

Objective 4) To minimise negative visual impact, in particular at the arterial road entry points into the Council area and the former Manly Council area, so as to promote townscape qualities.

Comment:

The scoreboard does not present as an negative visual impact upon the Manly Council area.

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.

3.2 Heritage Considerations

Council's Heritage advisor has reviewed the application and has no objection to the application.

While the subject site is nominated as a local heritage item under the Manly LEP, the existing scoreboard feature has little to no heritage significance. The new electronic scoreboard will not compromise the established heritage character of the subject site.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1329 for Demolition works and construction of a new scoreboard associated with a recreation area (Manly Oval) on land at Lot 7379 DP 1164856, 0 Sydney 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
DA-02/ Site plan and Roof Plan/ Revision A	30 July 2018	Bradstreet Building Services
DA-03/ Ground Floor Plan/ Revision A	30 July 2018	Bradstreet Building Services
DA-04/ Elevations/ Revision A	30 July 2018	Bradstreet Building Services
DA-05/ Sections/ Revision A	30 July 2018	Bradstreet Building Services

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
RMS Referral Reference No: SYD18/01324/01 (A23869487)	3 September 2018	Ahsanul Amin

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. (DACPLB01)

2. Prescribed Conditions

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

- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.

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

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

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

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

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

Reason: Legislative Requirement (DACPLB09)

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.

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

4. Security Bond

A bond (determined from cost of works) of \$1,500 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

5. **Compliance with Standards**

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

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

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

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

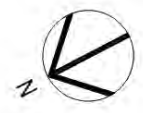
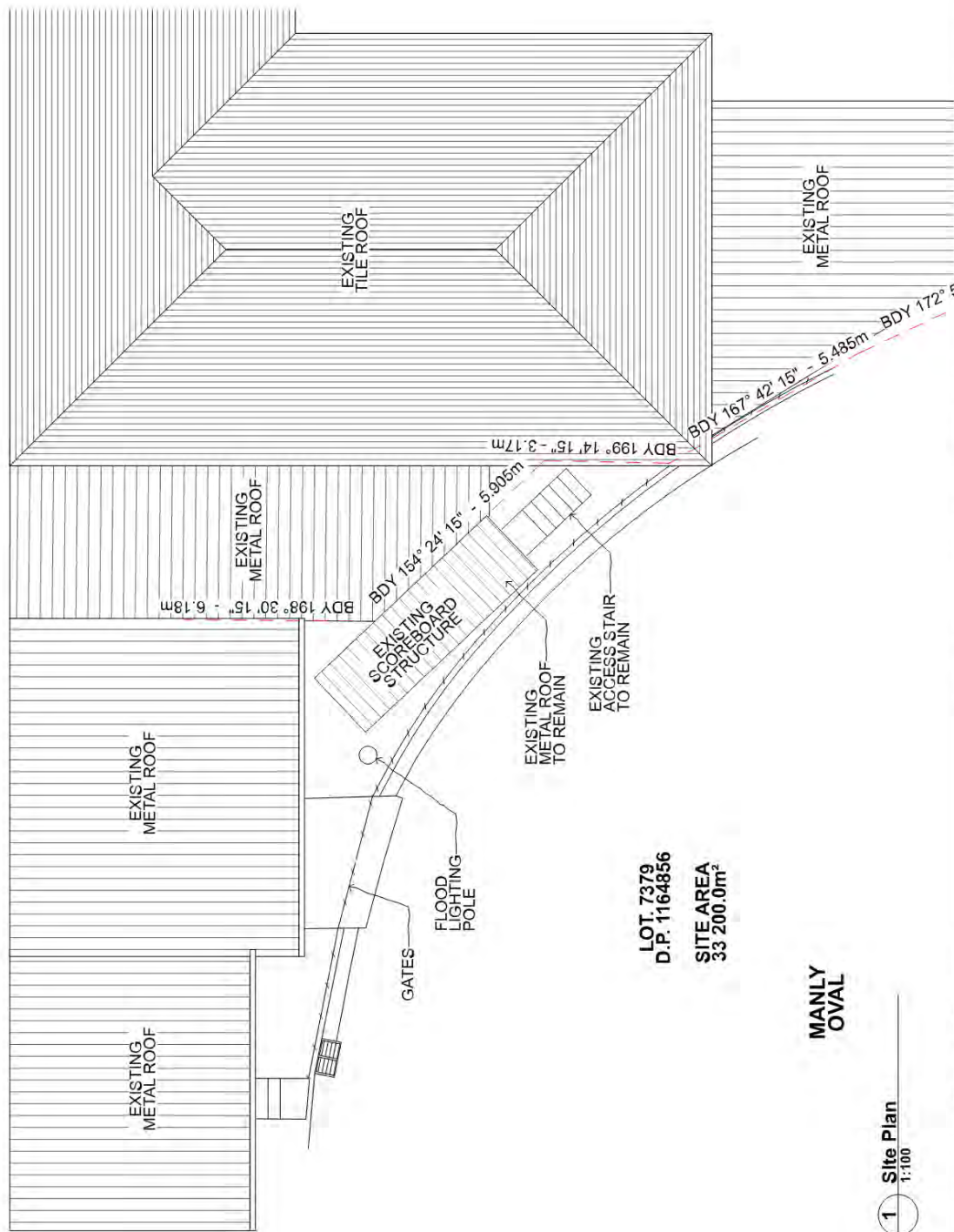
6. **Hours of Operation**

The hours of operation of the electronic scoreboard are to be restricted to:

- Monday to Sunday: 7:00am - Midnight

Upon expiration of the permitted hours, the scoreboard is not to be used/illuminated.

Reason: Information to ensure that amenity of the surrounding locality is maintained. (DACPLG08)



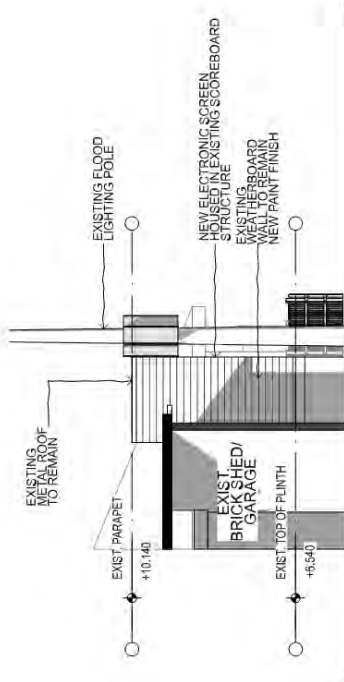
1 Site Plan
1:100

BRADSTREET BUILDING SERVICES
DESIGN & CONSTRUCTION
27 MYOORA ROAD, TERREY HILLS, NSW 2084
PH: 9450 2527 Fax: 9986 3526
ABN: 49 484 782 577
Building Licence No: 196624C

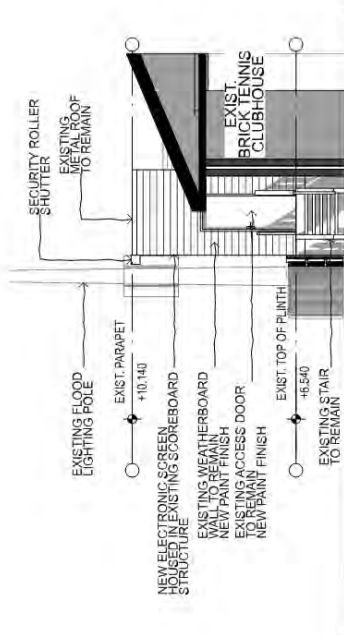
PRELIMINARY

SITE PLAN & ROOF PLAN
SCALE: 1:100/A2
PROJECT NO: 1048
DRAWING NO: DA-02
DATE: 30/07/2015
REVISION: A

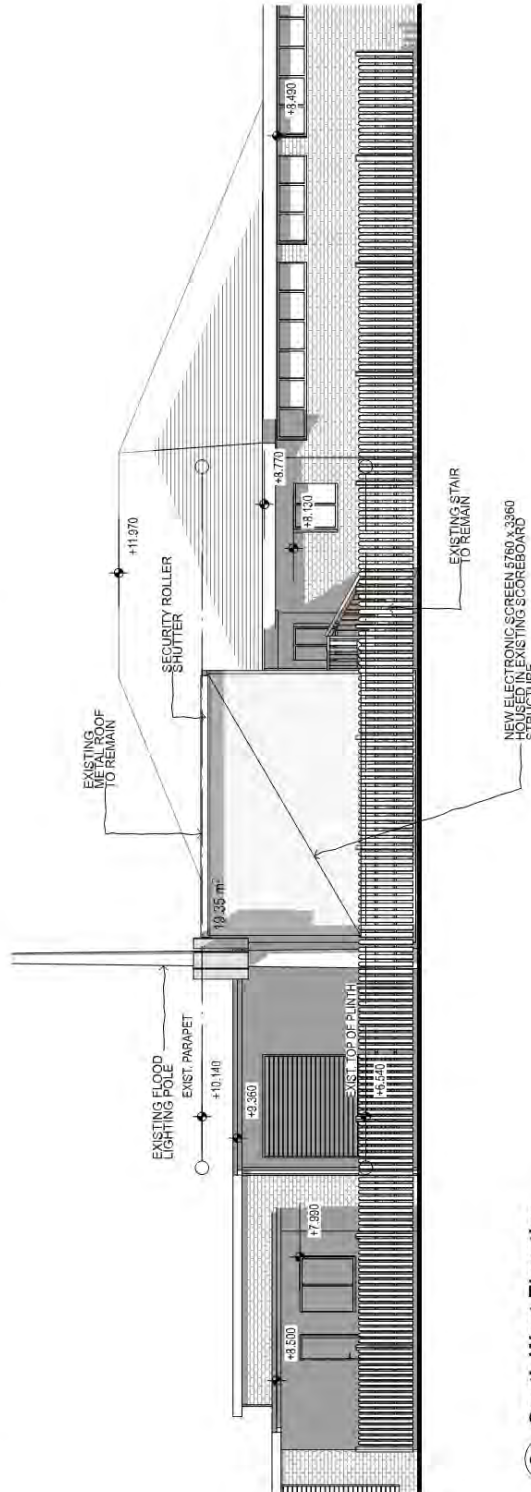
PROJECT: Manly Oval Scoreboard
CLIENT: Manly Oval Scoreboard
LOCATION: Raglan Street Manly NSW 2085
Lot 7379 D.P. 1164856
BRADSTREET DESIGN & CONSTRUCTION
27 Myoora Road, Terrey Hills NSW 2084
Terry Hills NSW 2084
(02) 9450 2527 0424 428 602



2 North West Elevation
1:100



1 South East Elevation
1:100



3 South West Elevation
1:100

NOTE: It is recommended that the client commission a structural engineer to investigate and provide advice for the proposed structure. The client should ensure that the structure is designed to meet the relevant standards and is constructed in accordance with the relevant standards. The client should also ensure that the structure is constructed in accordance with the relevant standards and is constructed in accordance with the relevant standards.

PRELIMINARY

**BRADSTREET BUILDING SERVICES
DESIGN & CONSTRUCTION**
27 MYOORA ROAD, TERREY HILLS, NSW 2084
PH: 9450 2527 Fax: 9986 3526
ABN: 49 484 782 577
Building Licence No: 196624C

PROJECT: New Oval Scoreboard
Mainway Road, Northern Beaches Council
Raglan Street, Northern Beaches Council
Lot 7379 DP 1164856
BRADSTREET DESIGN & CONSTRUCTION
27 Myoora Road, Terrey Hills, NSW 2084
PH: 9450 2527 Fax: 9986 3526
ABN: 49 484 782 577
Building Licence No: 196624C

ELEVATIONS
SCALE: 1:100/0.42
PROJECT NO: 1048
DRAWING NO: DA-04
DATE: 30/07/2015
BY: CS
CHECKED BY: A

ITEM 3.2

**MOD2018/0196 - MANLY WHARF, MANLY - MODIFICATION OF
DEVELOPMENT CONSENT DA0142/2011 GRANTED FOR
ALTERATIONS AND ADDITIONS TO MANLY WHARF**

REPORTING OFFICER

Rodney Piggott

TRIM FILE REF

2018/647805

ATTACHMENTS

1 Assessment Report

2 Plans

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. MOD2018/0196 for Modification of Development Consent DA0142/2011 granted for alterations and additions to Manly Wharf at Lots 1, 2 and 3 DP 1170245, Manly Wharf, East Esplanade, Manly subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0196
Responsible Officer:	Luke Perry
Land to be developed (Address):	Lot 2 DP 1170245, 0 Wharves And Jetties MANLY NSW 2095 Lot 3 DP 1170245, 0 Wharves And Jetties MANLY NSW 2095 Lot 1 DP 1170245, 0 Wharves And Jetties MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA0142/2011 granted for alterations and additions to Manly Wharf
Zoning:	W2 Environmental Protection under SREP (Sydney Harbour Catchment), 2005
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Roads & Maritime Services TMG Developments Pty Ltd
Applicant:	Mod Urban Pty Ltd
Application lodged:	18/04/2018
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	27/04/2018 to 01/06/2018
Advertised:	28/04/2018
Submissions Received:	2
Recommendation:	Approval

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

There are no assessment issues.

SITE DESCRIPTION

Property Description:	<p>Lot 2 DP 1170245 , 0 Wharves And Jetties MANLY NSW 2095</p> <p>Lot 3 DP 1170245 , 0 Wharves And Jetties MANLY NSW 2095</p> <p>Lot 1 DP 1170245 , 0 Wharves And Jetties MANLY NSW 2095</p>
Detailed Site Description:	<p>The subject site is legally described as Lots 1, 2 and 3 in Deposited Plan 1170245 and is commonly known as Manly Wharf. The site is located within Manly Cove and is located at the junction of East Esplanade and West Esplanade, Manly.</p> <p>The area of the site where the proposed development is located is within the boundaries defined as the Manly Wharf Lease Line and the line of the Mean High Water Mark. This site has an area of 13,405m².</p> <p>The subject site is located in Zone W2 Environmental Protection under SREP (Sydney Harbour Catchment), 2005.</p> <p>The site is oriented east west with the northern and southern boundaries fronting the western and eastern promenades, and Manly Cove respectively.</p> <p>The development site is limited to the eastern wing of Manly Wharf. The eastern wing currently accommodates a single retail level and first floor accommodating centre management offices. The existing eastern wing has frontage to Manly Cove and a curved entry at the north-eastern corner for the Manly Wharf Hotel.</p> <p>A single basement level sits below the Wharf deck level and is accessed from East Esplanade This level includes vehicle parking and loading facilities.</p> <p>The site has multiple pedestrian accesses from the street as well as from the Ferry terminal.</p> <p>The Wharf is surrounded by sheltered marine environment. The surrounding waters and nearby harbour foreshore is known to provide habitat for Little Penguins and possess other marine ecology including seagrass beds.</p> <p>Opposite the site to the west is Manly Corso. The Corso is a wide open promenade and public open space between Manly Beach and Many Wharf and provides street furniture, public art and a focal point for the Manly Town Centre. Commercial uses including shops, offices, restaurants, cafes, licensed premises and services and amenities dominate the frontages of The</p>

	<p>Corso. The scale of development along The Corso is varied between two (2) to four (4) storeys.</p> <p>The uses opposite the site along East Esplanade are dominated by mixed use developments mainly consisting of ground floor commercial uses such as shops, offices, restaurants and cafes with residential above. Some of the building along East Esplanade consist primarily of multi-storey commercial developments. The scale of development along East Esplanade is predominately between three (3) to six (6) storeys.</p> <p>The uses opposite the site along West Esplanade are dominated by mixed use developments mainly consisting of ground floor commercial uses such as shops, offices, restaurants and cafes with residential above. The scale of development along East Esplanade is predominately between three (3) to eight (8) storeys.</p>
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Map:



SITE HISTORY

Development Application No. 142/2011

This application was refused by the former Manly Independent Assessment Panel on 19 April 2012.

Subsequently an appeal was lodged by the application against the refusal of the application in the Land and Environment Court (LEC). The LEC approved the development by orders issued 7 November 2013.

Modification of DA142/2011 (Part 2):

This modification application, which is described within the former Manly Council Assessment Report as follows:

'Section 96 to modify approved Construction of a first floor addition to the existing Manly Wharf structure including two (2) restaurant tenancies and changes to the ground floor including two (2) new retail tenancies – involving modifications to the approved first floor addition, addition of new lifts, new stairs, increase to floor area of two restaurant tenancies, addition of outdoor seating areas and modifications to conditions 1 in relation to architectural plans, 3 in relation to the provision of outdoor seating, 90 in relation to outdoor eating area and deletion of condition 86 in relation to addition doors- Manly Wharf.'

was approved by the Manly Independent Assessment Panel on 15 October 2015/

PROPOSED DEVELOPMENT IN DETAIL

The modification application seeks to modify DA142/2011 granted for alterations and additions to Manly Wharf.

Specifically the modifications involve the introduction of a 'valet parking' arrangement which will result in an increase in the number of car spaces from 70 spaces to 91 spaces.

The valet parking arrangement will provide:

- 77 stack parking spaces;
- 8 pick-up / drop off spaces;
- 4 dedicated pick-up spaces; and
- 2 accessible parking spaces.

The application also seeks to modify Condition No. 60 which relates to s94 contributions to reflect the additional car parking proposed as part of this modification application.

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA142/2011, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA142/2011.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA142/2011 required general terms of approval to be issued by the NSW Office of Environment and Heritage. The subject modification application was referred to the NSW Office of Environment and Heritage who raise no objections to the proposed modifications subject to conditions included in the recommendation of this report.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environmental Plan 2011 and

Section 4.55 (2) - Other Modifications	Comments
	Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan does not apply 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>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p>Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>Clauses 54 and 109 of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <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 in the original 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 in the original consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent/This Clause is not relevant to this application.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the</p>

Section 4.15 'Matters for Consideration'	Comments
	nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mrs G Wellham	9 / 26 East Esplanade MANLY NSW 2095
Mr Glen Barry Wellham	PO Box 20 CROYDON NSW 2132

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

- I object to the development of the wharf. I feel it is far too extensive. Hours should not be extended as its a residential area. The people in Manly should be considered and not just the visitors.*
- I live close by at 24 East Esplanade. My peaceful enjoyment of Manly and those of my neighbours will be impacted by the scope of this development. I strongly disagree with the first floor development and any alterations to the ground floor extension and the increased trading hours.*

Comment:

The concerns raised above do not relate to the subject modification application. The modification application does not seek to change the approved hours of operation, the approved first floor or ground floor additions.

These matters do not warrant refusal of the application.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
NECC (Coast and Catchments)	<p>The SEE, traffic report and heritage report have been reviewed. There are no objections or conditions to the proposal as it affects parking only and does not have any Coastal impacts.</p>
Strategic and Place Planning (Heritage Officer)	<p>Further to a review of available documents and a site visit</p> <p>The application is an Integrated DA, thus a "prescribed DA" under the NSW Heritage Act 1977, i.e. requires approvals under the two Acts.</p> <p>Note that in case of any inconsistency in assessment under EPA Act (Local council) and the Heritage Act (NSW OEH), in heritage matters the assessment under the Heritage Act will prevail to the extent of the inconsistency (refer to NSW Heritage Act, Clause 68 – Consistency of approvals: "An approval given by a consent authority to a prescribed application is, to the extent of any inconsistency with the Heritage Council's determination of the application, void.")</p> <p>Therefore, we will have to include NSW OEH opinions in the assessment process and assess the proposal in concurrence with the NSW OEH.</p> <p>The following additional information is required to fully assess the impact of the current proposal:</p> <ul style="list-style-type: none"> - determination by NSW OEH under NSW Heritage Act.

Internal Referral Body	Comments
	<p>Please re-refer this application upon receiving the requested additional information.</p> <p>Kind Regards Zoran Popovic Heritage Advisor</p>
Traffic Engineer	<p>The applicant has adequately addressed the concerns raised as part of the previous referral.</p> <p>The Traffic Team raises no objection subject to conditions.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>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.</p>
Nominated Integrated Development – NSW Office of Environment and Heritage	<p>The proposal was referred to the NSW Office of Environment and Heritage as the subject site is listed as a State Heritage Item.</p> <p>The NSW Office of Environment and Heritage provided comments on 1/06/2018 raising no objections to the proposed modification subject to conditions which have been included in the recommendation of this report.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)**SEPP 55 - Remediation of Land**

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. 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 commercial land use.

SEPP (Infrastructure) 2007Ausgrid

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.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

The subject site is located in Zone W2 Environmental Protection under SREP SHC 2005.

The proposed development is not listed as a permissible use within Clause 18 of SREP SHC 2005 and as a result the proposal, and the approved development, relies upon the provisions of Clause 18(2) of SREP SHC 2005. The permissibility of the proposal has been considered through the assessment of the original application and subsequent modification. This application does not propose any change to the approved use and therefore the proposal is considered to be

permissible pursuant to cl 18(2) of SREP SHC 2005.

An assessment of the proposal against Clause 2(2) (aims of the SREP), Clause 14 (nominated planning principles), Clause 22 (relating to public access to and use of foreshores and waterways), Clause 23 (relating to maintenance of a working harbour), Clause 24 (relating to interrelationship of waterway and foreshore uses), Clause 25 (relating to foreshore and waterways scenic quality), Clause 26 (relating to maintenance, protection and enhancement of views) and Clause 27 (relating to boat storage facilities) has been undertaken.

The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

Manly Local Environmental Plan 2013

Principal Development Standards

The subject site is not located within the land application map contained within the Manly LEP 2013. However, for guidance, the subject site is listed within Schedule 5 of the Manly LEP 2013 as a state listed heritage item.

Given the subject site sits outside of the land application map contained within the Manly LEP, there are no development standards applicable to the assessment of this application.

Compliance Assessment

Clause	Compliance with Requirements
Schedule 5 Environmental heritage	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

The determination of DA142/2011 - Part 2 (modification application) imposed the following condition relating to s94 contributions:

60. A contribution is to be paid prior to the issue of an Occupation Certificate for this consent for the provision, extension or augmentation of traffic and parking, environmental programs, streetscape and landscaping, community facilities and administration that will, or are likely to be, required as a consequence of development in the area.

Total contribution for this development for construction of a first floor addition to the existing Manly Wharf structure including two (2) restaurant tenancies with plant rooms is currently \$1,197,737.54, however the amount of the payment shall be in accordance with the Section 94 charges as at the date of the payment. The charges may vary at the time of payment in accordance with Council's Section 94 Contributions Plan to effect changes in land values, construction costs and the Consumer Price Index.

Section 94 Contributions calculations

Additional Gross Floor Area (GFA) - 1,339.7m².

- \$26,378.20 per 100m² GFA (2015-2016)
- Proposed additional GFA is 1,339.7m²
- $(1,339.7 / 100) \times \$26,378.20 = \$353,388.74$

Plus the provision of 24 car parking spaces, or payment of contribution in lieu if they cannot be provided on site. The current amount of contribution (2015 – 2016) for each parking space not provided on site is Manly CBD - \$35,181.20 per space. The charges may vary at the time of payment in accordance with Council's Section 94 Contributions plan to effect changes in land values, construction costs and the Consumer Price Index.

Manly DCP 2013

1 car parking space per 40m² of service area.

The total proposed service area is 1241.2m²(Restaurant 1 serviced area 360.9m² + Restaurant 2 service area 405.2m² + outdoor dining area 195.8m² = 961.9)

$961.9\text{m}^2 / 40 = 24$ no. of car spaces required to be provided by the proposed development.

Parking contribution = $24 \times \$35,181.20$
= \$844,348.80

Total Section 94 contributions = \$1,197,737.54

Comment:

As detailed above, the approved development provides a shortfall in the required amount of off street car parking of 24 spaces. The subject application increases the total amount of on site car parking by a total of 21 spaces. This increase reduces the shortfall of on site car parking to 3 car spaces.

Therefore it is considered reasonable to amend Condition No. 60 to reflect the additional car parking to read as follows:

60. A contribution is to be paid prior to the issue of an Occupation Certificate for this consent for the provision, extension or augmentation of traffic and parking, environmental programs, streetscape and landscaping, community facilities and administration that will, or are likely to be, required as a consequence of development in the area.

Total contribution for this development for construction of a first floor addition to the existing Manly Wharf structure including two (2) restaurant tenancies with plant rooms is currently \$458,932.34 however the amount of the payment shall be in accordance with the Section 94 charges as at the date of the payment. The charges may vary at the time of payment in accordance with Council's Section 94 Contributions Plan to effect changes in land values, construction costs and the Consumer Price Index.

Section 94 Contributions calculations

Additional Gross Floor Area (GFA) - 1,339.7m².

\$26,378.20 per 100m² GFA (2015-2016)

Proposed additional GFA is 1,339.7m²

$(1,339.7 / 100) \times \$26,378.20 = \$353,388.74$

Plus the provision of 24 car parking spaces, or payment of contribution in lieu if they cannot be provided on site. The current amount of contribution (2015 – 2016) for each parking space not provided on site is Manly CBD - \$35,181.20 per space. The charges may vary at the time of payment in accordance with Council's Section 94 Contributions plan to effect changes in land

values, construction costs and the Consumer Price Index.

Manly DCP 2013

1 car parking space per 40m² of service area.

The total proposed service area is 1241.2m²(Restaurant 1 serviced area 360.9m² + Restaurant 2 service area 405.2m² + outdoor dining area 195.8m² = 961.9)

961.9m² / 40 = 24 no. of car spaces required to be provided by the proposed development.

Parking contribution = 3 x \$35,181.20
= \$105,543.60

Total Section 94 contributions = **\$458,932.34**

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0196 for Modification of Development Consent DA0142/2011 granted for alterations and additions to Manly Wharf on land at Lot 2 DP 1170245,0 Wharves And Jetties, MANLY, Lot 3 DP 1170245,0 Wharves And Jetties, MANLY, Lot 1 DP 1170245,0 Wharves And Jetties, MANLY, Lot 1 DP 809933,0 Wharves And Jetties, MANLY, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
N114471-01-01 (Manly Wharf Car Stacking)	17 April 2018	GTA Consultants

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

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

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

B. Add condition No. 1A - External referral/approval

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
NSW Office of Environment and Heritage	Response OEH Referral	1/06/2018

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other Department, Authority or Body's.

C. Modify Condition 60 to read as follows:

A contribution is to be paid prior to the issue of an Occupation Certificate for this consent for the provision, extension or augmentation of traffic and parking, environmental programs, streetscape and landscaping, community facilities and administration that will, or are likely to be, required as a consequence of development in the area.

Total contribution for this development for construction of a first floor addition to the existing Manly Wharf structure including two (2) restaurant tenancies with plant rooms is currently \$458,932.34 however the amount of the payment shall be in accordance with the Section 94 charges as at the date of the payment. The charges may vary at the time of payment in accordance with Council's Section 94 Contributions Plan to effect changes in land values, construction costs and the Consumer Price Index.

Section 94 Contributions calculations

Additional Gross Floor Area (GFA) - 1,339.7m².
 \$26,378.20 per 100m² GFA (2015-2016)
 Proposed additional GFA is 1,339.7m²
 (1,339.7/ 100) x \$26,378.20 = \$353,388.74

Plus the provision of 24 car parking spaces, or payment of contribution in lieu if they cannot be provided on site. The current amount of contribution (2015 – 2016) for each parking space not provided on site is Manly CBD - \$35,181.20 per space. The charges may vary at the time of payment in accordance with Council's Section 94 Contributions plan to effect changes in land values, construction costs and the Consumer Price Index.

Manly DCP 2013

1 car parking space per 40m² of service area.

The total proposed service area is 1241.2m²(Restaurant 1 serviced area 360.9m² + Restaurant 2 service area 405.2m² + outdoor dining area 195.8m² = 961.9)

961.9m² / 40 = 24 no. of car spaces required to be provided by the proposed development.

Parking contribution = 3 x \$35,181.20
= \$105,543.60

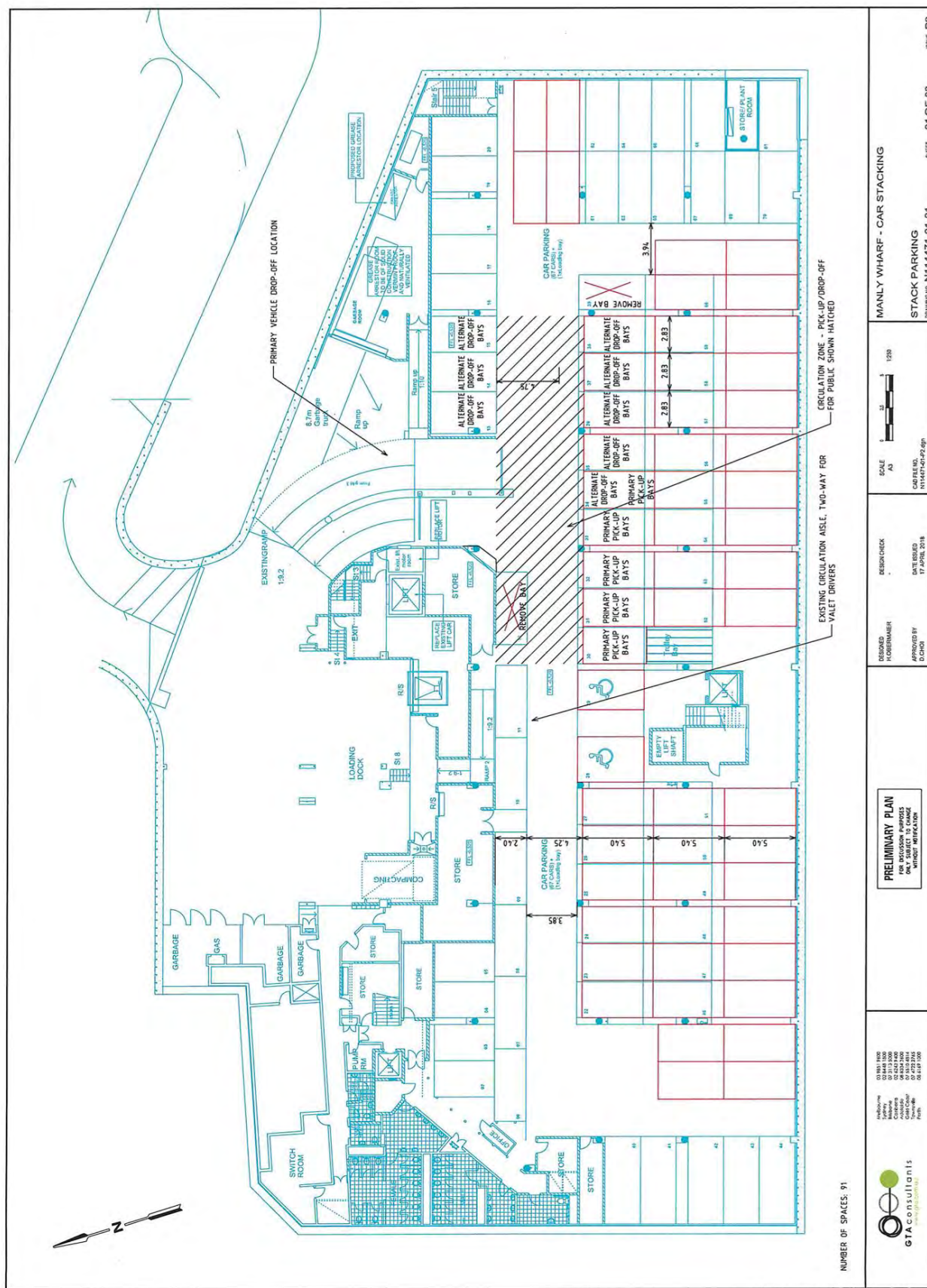
Total Section 94 contributions = \$458,932.34

D. Add Condition 69 Valet Parking:

69. Valet Parking

The valet parking system shall be provided at all times to ensure parking is provided on site to service the development.

Reason: Adequate parking provision (DACTRGOG2)



ITEM 3.3	MOD2018/0379 - 1 FAIRLIGHT CRESCENT, FAIRLIGHT - MODIFICATION OF DEVELOPMENT CONSENT DA0129/2016 GRANTED FOR ALTERATIONS AND ADDITIONS TO AN ATTACHED DUAL OCCUPANCY
REPORTING OFFICER	Rodney Piggott
TRIM FILE REF	2018/647448
ATTACHMENTS	1 Assessment Report 2 Plans

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. MOD2018/0379 for Modification of Development Consent DA0129/2016 granted for alterations and additions to an attached dual occupancy at Lot A DP 342163, 1 Fairlight Crescent, Fairlight subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0379
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot A DP 342163, 1 Fairlight Crescent FAIRLIGHT NSW 2094
Proposed Development:	Modification of Development Consent DA0129/2016 granted for alterations and additions to an attached dual occupancy
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:	Silvana Vescio
Applicant:	Woodhouse & Danks Pty Ltd
Application lodged:	23/07/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	26/07/2018 to 13/08/2018
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	Approval

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 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 - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot A DP 342163 , 1 Fairlight Crescent FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Fairlight Crescent, Fairlight.</p> <p>The site is irregular in shape with a frontage of 36.52m along Fairlight Crescent. The site has a surveyed area of 496.1m².</p> <p>The site is located within the R1 General Residential zone and accommodates a dual occupancy.</p> <p>The property slopes approximately 3.5m from north to south. The site contains some mature vegetation to the north.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by multi-storey residential flat buildings and a mix of one- and two-storey detached dwellings.</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:

- Application DA95/2014 for Alterations and additions to an existing Residential Flat Building including demolition of the two (2) existing sets of access stairs, construction of new access stairs, addition of two (2) new terraces on the north and south of each unit and new pergola to Unit 2 was approved on 27 August 2014 by the former Development Assessment Unit.
- Application DA142/2014 for Alterations and additions to an existing dual occupancy including a front fence was approved on 14 January 2015 by the former Development Assessment Unit.
- Application DA95/2014 for Section 96 to modify approved Alterations and additions to an existing Dual Occupancy including demolition of the two (2) existing sets of access stairs, construction of new access stairs, addition of two (2) new terraces on the north and south of each unit and new pergola to Unit 2 – involving alterations to approved terraces, balustrades and barbeque area, and conversion of family room to a bedroom with additions of non-habitable rooms at Unit 1 – Part 2 was approved on 26 November 2014 by the former Development Assessment Unit.
- Application DA49/2015 for Alterations and additions to an existing dual occupancy including additions to the first floor with roof over the existing terraces, new lift, internal alterations, changes to windows and doors was approved on 29 July 2015 under staff delegation.
- Application DA129/2016 for Alteration and addition to existing dual occupancy (attached) including a new third level addition with front and rear terraces, second level extension, a new enclosed stairwell and lift, changes to windows and doors, internal alterations, demolition of existing carport, construction of a double garage with four car stacker and removal of trees was approved on 15 December 2016 by the former Northern Beaches Independent Assessment Panel.
- Application DA272/2016 for Two (2) lot Strata subdivision of an existing Dual Occupancy was approved on 12 December 2016 under staff delegation.
- Application DA129/2016 for Section 96 to modify approved alterations and addition to existing dual occupancy (attached) including a new third level addition with terrace, second level extension, a new enclosed stairwell and lift, changes to windows and doors, internal alterations,

demolition of existing carport, construction of a double garage with four car stacker and removal of trees. – Part 2 was approved on 13 September 2017 under staff delegation.

- Application DA129/2016 for Section 96 to modify approved alterations and additions to the dual occupancy – Part 3 was staff on 26 February 2018 under staff delegation.
- Application Mod2018/0505 for minor modifications has been lodged with Council and is currently under assessment.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the following modifications to Development Consent No. DA129/2016:

- Deletion of the approved garage with car stacker; and
- Construction of a triple carport.

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

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

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under

Section 4.55 (2) - Other Modifications	Comments
originally granted was modified (if at all), and	DA129/2016.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA129/2016 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environmental Plan 2013 and Manly Development Control Plan 2013.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original 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 in the original 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 in the original 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 in the original 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>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 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</p>

Section 4.15 'Matters for Consideration'	Comments
	economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Mr Ewhen Hreszczuk	23 Lauderdale Avenue FAIRLIGHT NSW 2094

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

- Proposed carport covers 80% of the southern boundary at 2.9-4.58m in height, and 36% of the eastern boundary at a height of 4.5-4.58m.
- The proposed carport will impact on solar access to the south.
- Maintenance of the structure would require access via the property to the south.
- The proposed carport will create a sense of enclosure to the property to the south.

The matters raised within the submissions are addressed as follows:

- Setbacks / Height on Boundary
Comment:
The proposal is acceptable in relation to setbacks and height on boundary for the reasons detailed in the section of this report relating to Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the MDCP 2013.
- Solar Access

Comment:

The proposal is acceptable in relation to solar access for the reasons detailed in the section of this report relating to Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP 2013.

- Maintenance

Comment:

Being an open structure, maintenance of the carport can be carried out from within the subject site. If maintenance is required from another property the *Access to Neighbouring Land Act* can be utilised.

- Amenity - Enclosure

Comment:

A condition of consent has been applied requiring the carport structure to be open for the portion of the walls above 1m from the finished floor level of the carport, to reduce its visual impact.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<p>The applicant proposed an extension on the approved carport structure.</p> <p>In the original DA0129/2016, the condition 7 and 8 have requested a stormwater management plan to be designed in accordance with Council's Manly Specification for on site stormwater management 2003.</p> <p>It is the owner's responsibility to amend their stormwater management plan to reflect the proposed change in the modification.</p> <p>In this regard, Development Engineer has no objection to the application.</p> <p>No additional engineering condition is required.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>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.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. 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 (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	3.96-4.98m (garage)	2.83-4.5m (carport)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 496.1sqm	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	N: 7.1m (based on gradient 1:10)	3.75m	2.3m	Yes
	S: 7.1m (based on gradient 1:10)	4.52m	4.09m	Yes
	E: 6.5m (based on gradient 1:1)	4.76m	4.32m	Yes
	W: 6.5m (based on gradient 1:1)	3.7m	2.65m	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	3.86m (Garage)	1.5-4.6m (Carport)	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 2.36m (based on wall height)	150mm-3.9m	0m	No
	W: 2.16m (based on wall height)	180mm-5.54m	0m	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space min. 55% of site area	80% (397sqm)	73.7% (366sqm)	Yes
4.1.5.2 Landscaped Area	Landscaped area min 35% of open space	34.16% (144.18sqm)	30.8% (113sqm)	No
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.96m (Garage)	7.57m	No
Schedule 3 Parking and Access	Residents: 1 space per dwelling, plus 0.2 spaces per 2-bedroom dwelling, plus 0.3 spaces 3-bedroom dwelling (2.7 spaced, rounded up to 3 spaces)	4 spaces	3 spaces	Yes
	Visitors: 0.25 spaces	0	0	No - As

	per dwelling (0.5 spaces, rounded up to 1 space)			Approved
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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
3.7 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
4.1.4 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
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

The proposal complies with this clause. A submission has been received objecting to loss of solar access. The proposed development is acceptable in relation to the relevant objectives of this clause, as follows:

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

The proposed modification results in additional overshadowing to No. 3 Fairlight Crescent to the south. However, these shadows fall to the front yard of the property, and do not impact upon private open space or windows to habitable rooms. As such, the proposed modification retains adequate and equitable access to light and sunshine to No. 3 Fairlight Crescent.

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.

As demonstrated by the shadow diagrams submitted with the modification application, the proposed amendment does not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice. Further, the proposed development retains the level of solar access presently enjoyed to windows or glazed doors to living rooms of adjacent properties for more than 2 hours from 9am to 3pm on the winter solstice. As such, the proposed modification is compliant with the relevant sunlight access and overshadowing controls of the MDCP 2013 and with this objective.

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.*

As above, while the proposed carport structure includes a nil-side setback with little modulation, the proposed modification does not impact upon windows, living rooms or principal outdoor areas, and is therefore consistent with the relevant sunlight access and overshadowing controls and objectives of the MDCP 2013.

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

The proposal is not compliant with the side setback control, as it includes walls with a nil setback on the southern and eastern side boundaries. The proposal is not compliant with the front setback control as the proposed carport is set 1.5-4.6m from the western (front) boundary. The proposed development is acceptable in relation to the relevant outcomes of this clause, as follows:

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

The proposal is not inconsistent with the streetscape and proportions along Fairlight Crescent, which commonly includes car parking structures (including solid garages) within the front and side setbacks. Further, a condition has been applied requiring the carport structure to be open for the portion of the walls above 1m from the finished floor level of the carport, to reduce its visual impact. The proposal does not require removal of significant vegetation on the site.

Objective 2) To ensure and enhance local amenity by:

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

The proposed carport does not impact upon the privacy of adjoining properties, does not result in unreasonable overshadowing impacts, and does not result in unreasonable view loss. The proposal allows for adequate spacing between buildings. The proposal is not inconsistent with the streetscape along Fairlight Crescent, which commonly includes car parking structures (including solid garages) within the front and side setbacks. The proposal does not alter traffic conditions or result in unreasonable loss of visibility.

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

The proposed carport is located in the most appropriate location on the site, as it takes advantage of the existing driveway, but is angled away from the street frontage and open to the street.

Objective 4) To enhance and maintain natural features by:

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

The proposed carport does not impede on the site's ability to provide deep soil zones, vegetation and trees, and does not unduly detract from the landscaped context of the site. SEPP 19 does not apply in this regard, as the site does not contain or adjoin bushland.

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

Not applicable.

4.1.5 Open Space and Landscaping

The proposal includes 30.8% of the total open space as landscaped open space, where the requirement is 35%. The non-compliance occurs as a result of the large balconies at each level of the approved dual occupancy. These balconies are included in the calculation of total open space, which is well above the required 55% of the site (73.7%). If the site were to provide just the required 55% of the site as total open space (272.85sqm), the portion of the site calculated as landscaped open space would equate to 41.4% of the total open space, and would therefore be compliant. The proposed development is acceptable in relation to the relevant outcomes of this clause, as follows:

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

The proposed modification does not impact upon the main vegetated portion of the site to the north (on the corner of Fairlight Crescent, and Lauderdale Avenue) and retains adequate native planting to support native fauna.

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

The proposed modification allows for adequate planting on site with the retention of the main vegetated portion of the site to the north, which contains trees. Further, the modification retains an adequate portion of landscaped open space to the south of the dual occupancy on site, which is capable of supporting additional planting.

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

The proposal does not unreasonably impact the amenity of the subject site or adjacent sites in relation to sunlight, privacy, or views, as detailed through this report, and is consistent with the streetscape.

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

The subject site retains an adequate level of porous landscaped area in order to maximise infiltration and minimise runoff. As above, if the site did not include large balcony spaces included in the

calculation of total open space, the site would be able to demonstrate compliant landscaped open space.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space. The proposed development is adequately landscaped in order to minimise the spread of weeds and the degradation of open space.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors. The proposed development is adequately landscaped in order to support wildlife in the locality.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

The proposed modification includes a carport with a width of 7.57m in the front setback, where the maximum width for a car parking structure is 6.2m.

The proposed development is acceptable in relation to the relevant outcomes of this clause, as follows:

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

The proposed development includes compliant parking for the residents on site, being three spaces. The proposal does not include visitor parking, though was approved as such. In this way, the proposal provides adequate parking for the use of the site.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

The proposed development includes compliant parking for the residents on site, being three spaces. The proposal does not include visitor parking, though was approved as such. In this way, the proposal does not result in additional on-street parking demand.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

The proposed modification reduces the number of cars able to access the site, and does not alter the approved crossing to the site. As such, the proposed modification allows for safe, efficient, convenient vehicular access. The proposed works are adequately integrated with the remainder of the development on site, and are consistent with the existing streetscape.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

The approved development included a car stacker, which relied on excavation of the site. The proposed modification removes the requirement for excavation by introducing a carport at ground level.

Objective 5) To ensure the width and number of footpath crossings is minimised.

The proposed modification does not include additional crossings and does not propose to widen the approved crossing.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

The proposal includes adequate landscaping, as detailed in the section of the report relating to Clause 4.1.5 Open Space and Landscaping of the MDCP 2013. Internal access arrangements remain unchanged.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Not applicable. The subject site is not located in a Centre.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0379 for Modification of Development Consent DA0129/2016 granted for alterations and additions to an attached dual occupancy on land at Lot A DP 342163, 1 Fairlight Crescent, FAIRLIGHT, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
D01 Site Plan	18 June 2018	Woodhouse &
D10 Ground Floor Plan	18 June 2018	Woodhouse &
D20 North & South Elevations	18 June 2018	Woodhouse &
D21 West & East Elevations	18 June 2018	Woodhouse &

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

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

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

Waste Management Plan		
Drawing No.		D:
Waste Management Plan		20

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

B. Add Condition ANS06 to read as follows:

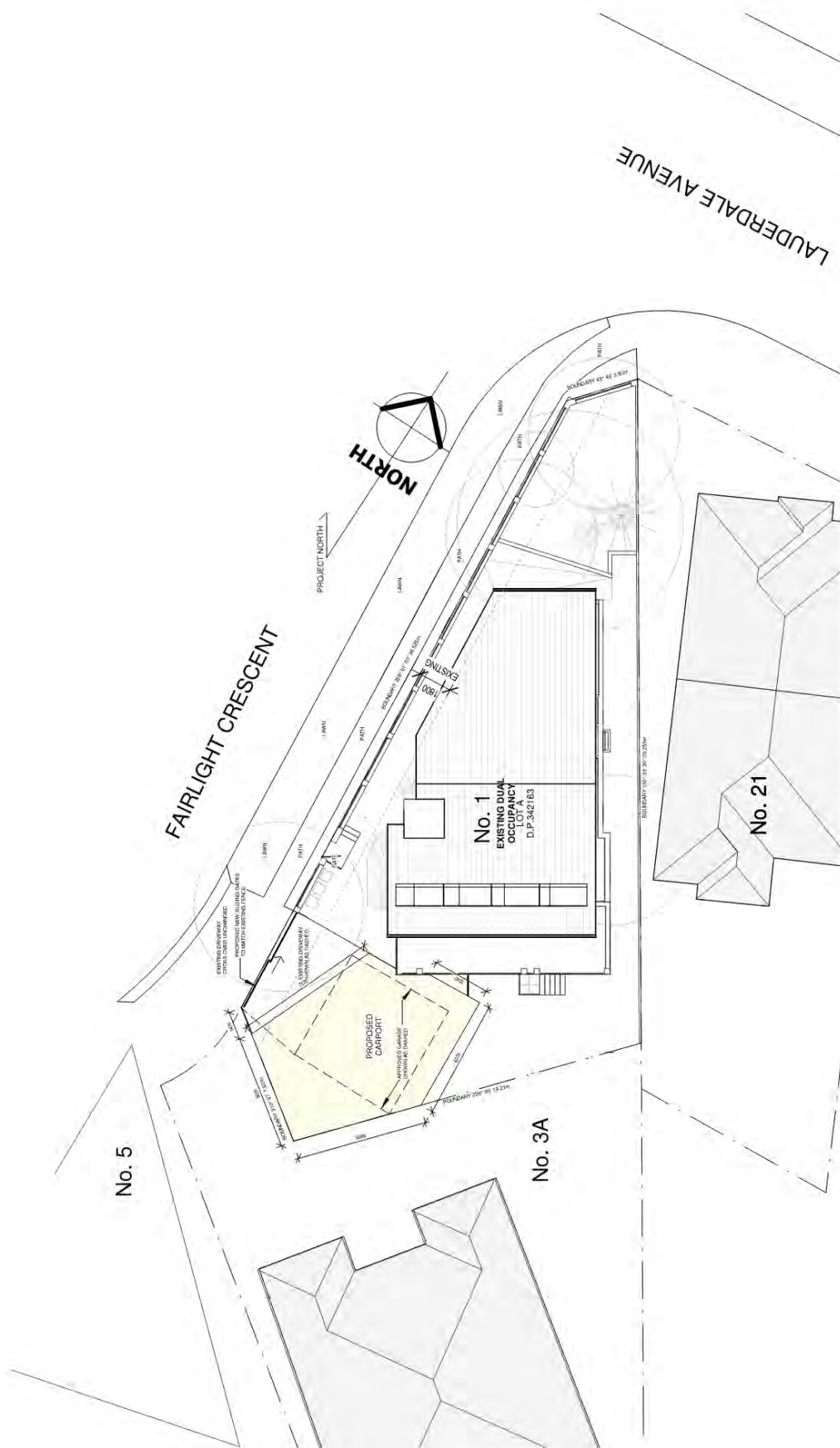
Carport Structure

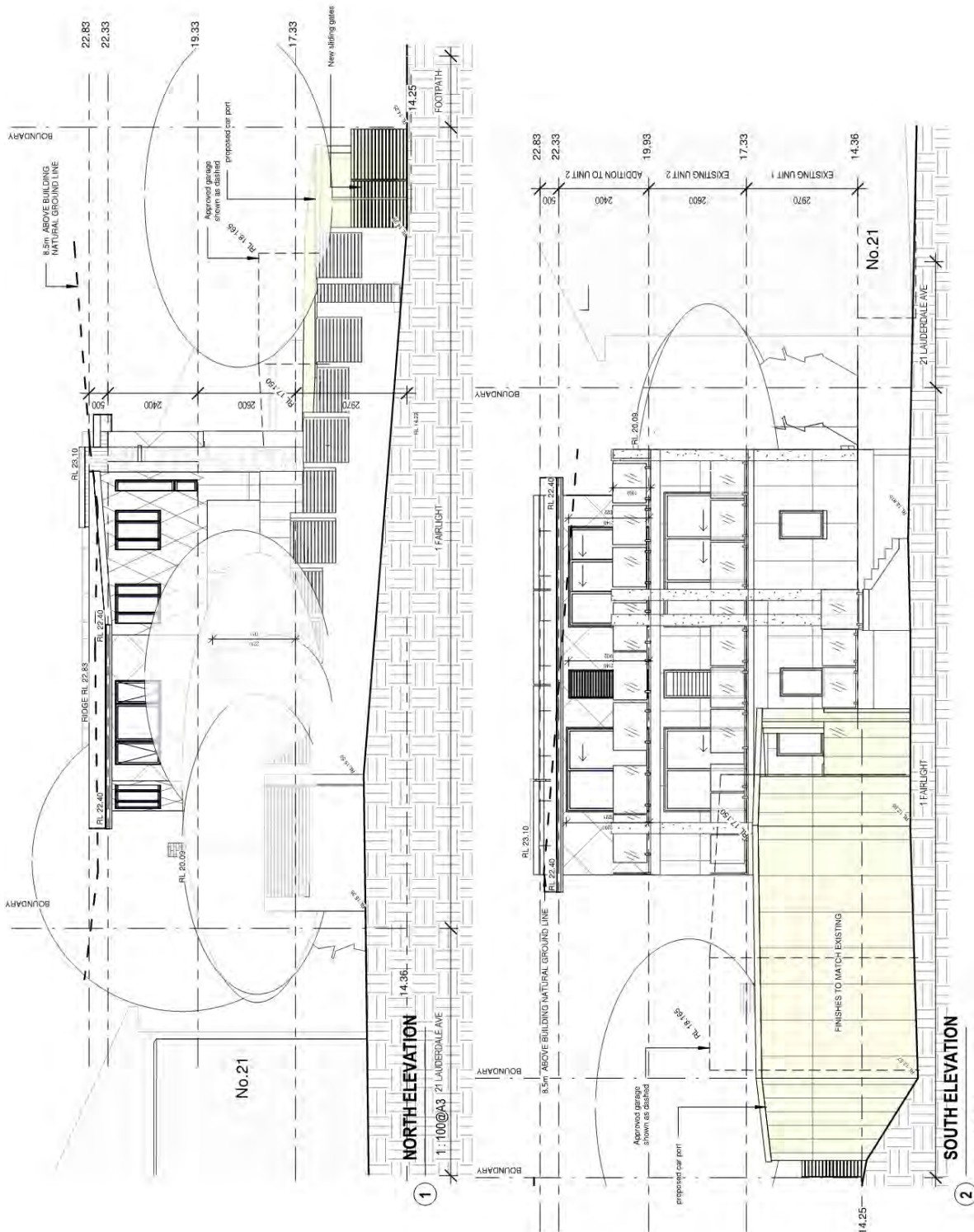
The proposed carport structure is to be amended as follows:

- The carport walls are to be open above 1m from the finished floor level of the carport.

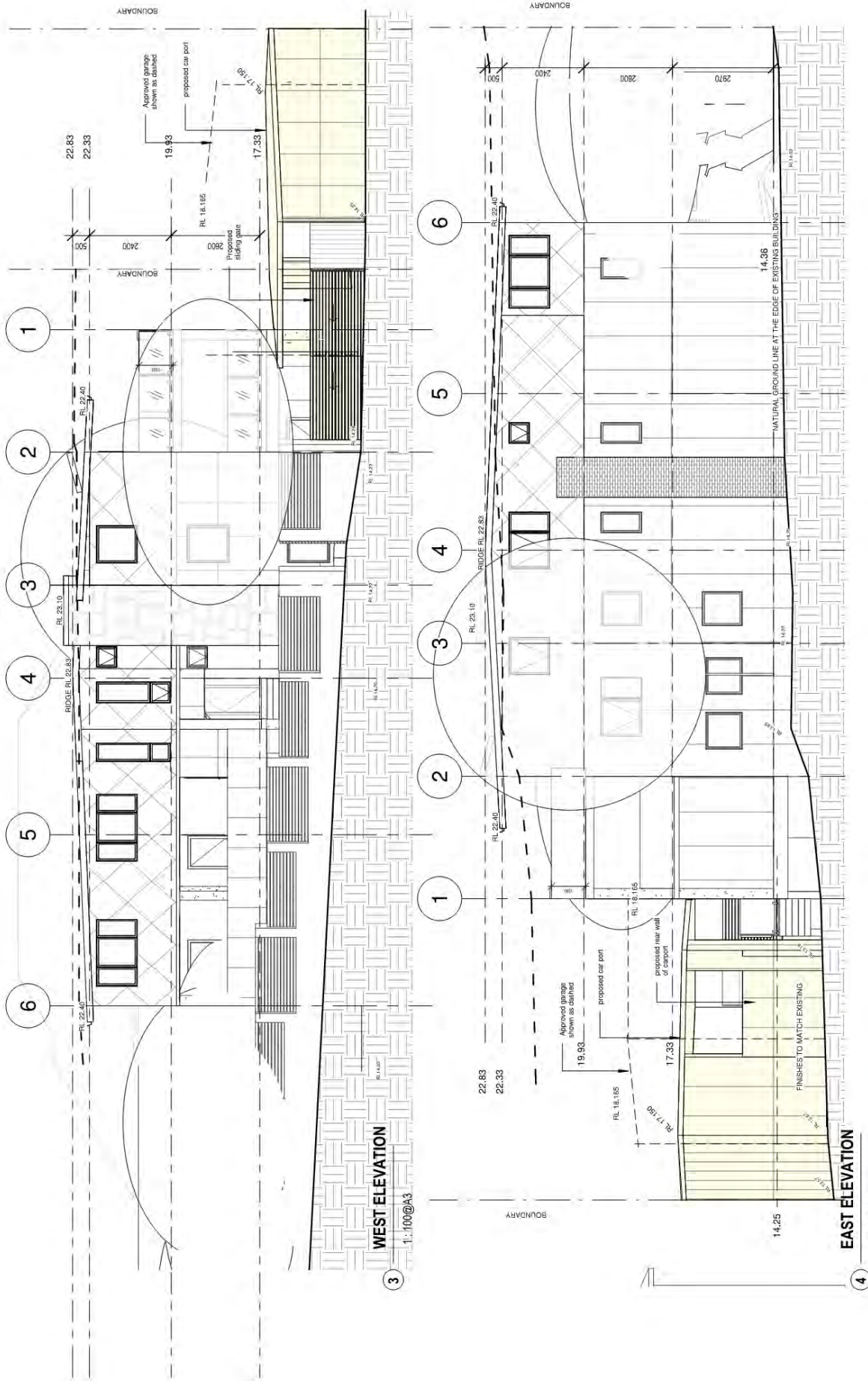
Plans demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To reduce the visual impact of the carport.

[illegible]



WOODHOUSE & DANKS ARCHITECTS Suite 207, Level 2, 20 Dale Street, Brisbane, QLD 4000 Tel: (07) 3221 1111 Email: info@woodhouseanddanks.com.au		15005 D20 DATE: MARCH 2015 SCALE: 1:100@A3	
PROPOSED CARPORT 1 FAIRLIGHT CRESCENT, FAIRLIGHT		NORTH & SOUTH ELEVATIONS	
NO.	DATE	BY	CHECKED BY
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WOODHOUSE & DANKS ARCHITECTS Suite 207, Level 2, 20 Dale Street, Burwood, NSW 2149 Tel: (02) 9737 1000 Email: info@woodhouseanddanks.com.au		DRAWING NO: 15005 PROJECT NO: D21 DATE: MARCH 2015 SCALE: 1:100@A3
PROPOSED CARPORT 1 FAIRLIGHT CRESCENT, FAIRLIGHT		WEST & EAST ELEVATIONS
GENERAL NOTES 1. CONSULT WITH ALL AGENCIES AND AUTHORITIES TO BE CONSULTED FOR APPROVAL OF THE PROPOSED DEVELOPMENT. 2. FINISHED DIMENSIONS TO BE USED IN PREFERENCE TO SCALE DIMENSIONS. 3. THE DRAWING IS A REPRESENTATION OF THE PROPOSED DEVELOPMENT. 4. THE DRAWING IS NOT TO BE USED FOR ANY OTHER PURPOSE. 5. THE DRAWING IS NOT TO BE USED FOR ANY OTHER PURPOSE.	NO. DATE 1. 11.06.12 2. 11.06.12 3. 11.06.12 4. 11.06.12 5. 11.06.12 6. 11.06.12 7. 11.06.12 8. 11.06.12 9. 11.06.12 10. 11.06.12 11. 11.06.12 12. 11.06.12 13. 11.06.12 14. 11.06.12 15. 11.06.12 16. 11.06.12 17. 11.06.12 18. 11.06.12 19. 11.06.12 20. 11.06.12 21. 11.06.12 22. 11.06.12 23. 11.06.12 24. 11.06.12 25. 11.06.12 26. 11.06.12 27. 11.06.12 28. 11.06.12 29. 11.06.12 30. 11.06.12 31. 11.06.12 32. 11.06.12 33. 11.06.12 34. 11.06.12 35. 11.06.12 36. 11.06.12 37. 11.06.12 38. 11.06.12 39. 11.06.12 40. 11.06.12 41. 11.06.12 42. 11.06.12 43. 11.06.12 44. 11.06.12 45. 11.06.12 46. 11.06.12 47. 11.06.12 48. 11.06.12 49. 11.06.12 50. 11.06.12 51. 11.06.12 52. 11.06.12 53. 11.06.12 54. 11.06.12 55. 11.06.12 56. 11.06.12 57. 11.06.12 58. 11.06.12 59. 11.06.12 60. 11.06.12 61. 11.06.12 62. 11.06.12 63. 11.06.12 64. 11.06.12 65. 11.06.12 66. 11.06.12 67. 11.06.12 68. 11.06.12 69. 11.06.12 70. 11.06.12 71. 11.06.12 72. 11.06.12 73. 11.06.12 74. 11.06.12 75. 11.06.12 76. 11.06.12 77. 11.06.12 78. 11.06.12 79. 11.06.12 80. 11.06.12 81. 11.06.12 82. 11.06.12 83. 11.06.12 84. 11.06.12 85. 11.06.12 86. 11.06.12 87. 11.06.12 88. 11.06.12 89. 11.06.12 90. 11.06.12 91. 11.06.12 92. 11.06.12 93. 11.06.12 94. 11.06.12 95. 11.06.12 96. 11.06.12 97. 11.06.12 98. 11.06.12 99. 11.06.12 100. 11.06.12	NO. DATE 1. 11.06.12 2. 11.06.12 3. 11.06.12 4. 11.06.12 5. 11.06.12 6. 11.06.12 7. 11.06.12 8. 11.06.12 9. 11.06.12 10. 11.06.12 11. 11.06.12 12. 11.06.12 13. 11.06.12 14. 11.06.12 15. 11.06.12 16. 11.06.12 17. 11.06.12 18. 11.06.12 19. 11.06.12 20. 11.06.12 21. 11.06.12 22. 11.06.12 23. 11.06.12 24. 11.06.12 25. 11.06.12 26. 11.06.12 27. 11.06.12 28. 11.06.12 29. 11.06.12 30. 11.06.12 31. 11.06.12 32. 11.06.12 33. 11.06.12 34. 11.06.12 35. 11.06.12 36. 11.06.12 37. 11.06.12 38. 11.06.12 39. 11.06.12 40. 11.06.12 41. 11.06.12 42. 11.06.12 43. 11.06.12 44. 11.06.12 45. 11.06.12 46. 11.06.12 47. 11.06.12 48. 11.06.12 49. 11.06.12 50. 11.06.12 51. 11.06.12 52. 11.06.12 53. 11.06.12 54. 11.06.12 55. 11.06.12 56. 11.06.12 57. 11.06.12 58. 11.06.12 59. 11.06.12 60. 11.06.12 61. 11.06.12 62. 11.06.12 63. 11.06.12 64. 11.06.12 65. 11.06.12 66. 11.06.12 67. 11.06.12 68. 11.06.12 69. 11.06.12 70. 11.06.12 71. 11.06.12 72. 11.06.12 73. 11.06.12 74. 11.06.12 75. 11.06.12 76. 11.06.12 77. 11.06.12 78. 11.06.12 79. 11.06.12 80. 11.06.12 81. 11.06.12 82. 11.06.12 83. 11.06.12 84. 11.06.12 85. 11.06.12 86. 11.06.12 87. 11.06.12 88. 11.06.12 89. 11.06.12 90. 11.06.12 91. 11.06.12 92. 11.06.12 93. 11.06.12 94. 11.06.12 95. 11.06.12 96. 11.06.12 97. 11.06.12 98. 11.06.12 99. 11.06.12 100. 11.06.12

ITEM 3.4

**MOD2018/0324 - 133-139 PITTWATER ROAD, MANLY -
MODIFICATION OF DEVELOPMENT CONSENT DA0213/2017
GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION
OF A NEW SERVICE STATION**

REPORTING OFFICER

Rodney Piggott

TRIM FILE REF

2018/647139

ATTACHMENTS

1 Assessment Report

2 Plans

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. MOD2018/0324 for Modification of Development Consent DA0213/2017 granted for Demolition works and construction of a new service station at Lots 1, 2, 3 and 4 Sec 6 DP 2427, 133-139 Pittwater Road, Manly subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0324
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 2 DP 2427, 133 - 139 Pittwater Road MANLY NSW 2095 Lot 3 DP 2427, 133 - 139 Pittwater Road MANLY NSW 2095 Lot 4 DP 2427, 133 - 139 Pittwater Road MANLY NSW 2095 Lot 1 DP 2427, 133 - 139 Pittwater Road MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA0213/2017 granted for Demolition works and construction of a new service station
Zoning:	Manly LEP2013 - Land zoned B1 Neighbourhood Centre Manly LEP2013 - Land zoned B1 Neighbourhood Centre Manly LEP2013 - Land zoned B1 Neighbourhood Centre Manly LEP2013 - Land zoned B1 Neighbourhood Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Jasbe Manly Pty Ltd
Applicant:	Blue Sky Planning & Environment
Application lodged:	28/06/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	11/07/2018 to 29/07/2018
Advertised:	14/07/2018
Submissions Received:	8
Recommendation:	Approval

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the

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

SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

SITE DESCRIPTION

Property Description:	<p>Lot 2 DP 2427 , 133 - 139 Pittwater Road MANLY NSW 2095</p> <p>Lot 3 DP 2427 , 133 - 139 Pittwater Road MANLY NSW 2095</p> <p>Lot 4 DP 2427 , 133 - 139 Pittwater Road MANLY NSW 2095</p> <p>Lot 1 DP 2427 , 133 - 139 Pittwater Road MANLY NSW 2095</p>
Detailed Site Description:	<p>The subject property is commonly known as 133-139 Pittwater Road, Manly and legally known as Lots 1-4 Section 6 DP 2427. The site is located on the western side of Pittwater Road. The property is irregular in shape, has a frontage of 40.25m to Pittwater Road, 30.115m to Pine Street and 31.225m to Smith Lane, and an overall site area of 1,117.2sqm. The property is currently under construction and previously contained a service station. The property is level.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>The adjacent property to the north, at 141 Pittwater Road, is developed with a two-storey terrace dwelling. Development in this area consists of one- and two-storey detached and semi-detached dwellings, shop top housing and commercial uses.</p>

Map:



SITE HISTORY

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

Application No. DA130/2012 for Extension of hours of operation of the existing BP Service Station to 24 hours, 7 days a week was refused on 21 February 2013 by the Manly Independent Assessment Panel.

Application No. DA213/2017 for Demolition and construction of a new service station was approved on 7 March 2018 by the Northern Beaches Local Planning Panel. This proposal seeks to modify DA213/2017.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks the following modifications to Development Consent No. 213/2017:

- Removal of the outdoor seating area;
- Reduction in the number of fuel dispensers;
- Construction of an air and water bay;
- Modification of the waste management area to include a plant area;
- Reconfiguration of car parking; and
- Changes to signage and branding.

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA213/2017, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.15(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA213/2017.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2011 and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original 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 the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction</p>

Section 4.15 'Matters for Consideration'	Comments
	Certificate. This clause is not relevant to this application.
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	See discussion on “Public Exhibition” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 8 submission/s from:

Name:	Address:
Ms Giulia Carbone	129 Pittwater Road MANLY NSW 2095
Elena Perez	129 Pittwater Road MANLY NSW 2095
Ivan Perez	129 Pittwater Road MANLY NSW 2095
Mr Raymond Douglas Fowler	10 Pine Street MANLY NSW 2095
Mrs Jodie Ellen Obst Mr Christopher John Obst	15 Pine Street MANLY NSW 2095
Mr William Robert Burgess	19 Pine Street MANLY NSW 2095
Mr Graham Mawer Ms Nadine Kayron Cattell	23 Pine Street MANLY NSW 2095
Mr Timothy Angus Hussey	17 Pine Street MANLY NSW 2095

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

- Construction and Vibration Noise for approved works is unacceptable, particularly to nearby heritage houses.
- What are the modifications?
- Hours of operation - 24 hours.
- Noise impacts from proposed water and air pump station, and from the pump's signal alarm. Hours of use of the water and air pump station should be restricted, acoustic treatment should be enforced, and noise levels should be monitored.
- Owners of Nos. 19 and 23 Pine Street were not notified.
- Increase in foot traffic.
- Tank installation.

The matters raised within the submissions are addressed as follows:

- Construction and Vibration Noise
Comment:
As per Condition No. ANS07A (4CD10) of the original Development Consent 213/2017, noise arising from demolition and construction works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997* and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual. Further, as per Condition No. ANS11 (6NL03) of the original Development Consent 213/2017, the ongoing use of the premises/property must not give rise to 'offensive noise' as defined under the provisions of the *Protection of the Environment Operations Act 1997*. Noise exceeding the relevant legislation and guidelines are a matter for Council's Compliance Team for investigation.
- Modifications
Comment:
The proposal seeks the following modifications:
 - Removal of the outdoor seating area;
 - Reduction in the number of fuel dispensers;
 - Construction of an air and water bay;
 - Modification of the waste management area to include a plant area;
 - Reconfiguration of car parking; and
 - Changes to signage and branding.
 Objecting parties querying what works from this application were informed of the above modifications prior to finalisation of the assessment report.
- Hours of Operation
Comment:
The hours of operation of the premises (i.e. hours open for business) are approved at 7am-10pm Sunday to Wednesday and 7am-12am (midnight) Thursday to Saturday. The service station does not have approval for 24-hour operation. No change to the hours of operation is proposed.
- Noise Impacts
Comment:

Council's Environmental Health Officer has reviewed the application in relation to noise impacts from the water and air pump station, and the pump's signal alarm. The Environmental Health Officer has recommended approval of the application subject to a condition of consent requiring that use of the air pump station is not to create noise nuisance to any residential premise from 7pm nightly. Further, as above, as per Condition No. ANS11 (6NL03) of the original Development Consent 213/2017, the ongoing use of the premises/property must not give rise to 'offensive noise' as defined under the provisions of the *Protection of the Environment Operations Act 1997*. Noise exceeding the relevant legislation and guidelines are a matter for Council's Compliance Team for investigation.

- Notification of Nos. 19 and 23 Pine Street.

Comment:

The modification application was notified in accordance with the requirements of Part 2 Exhibition, Advertisement and Notification of Applications of the Manly Development Control Plan 2013. Notification was sent on 11 July 2018 to adjoining properties and properties across the road from the development (consistent with the original development application), as well as to previously objecting parties, including Nos. 19 and 23 Pine Street, Manly. The application was also advertised in the Manly Daily on 14 July 2018.

- Increase in Foot Traffic

Comment:

As above, the service station does not have approval for 24-hour operation and no change to the hours of operation is proposed. As such, there is no opportunity for round-the-clock patronage. Further, the dimensions of the shop increase by a total of 12sqm, which is not anticipated to encourage additional patronage. Finally, the seating area for the approved cafe has been deleted, thereby partly reducing anticipated foot traffic.

- Tank Installation

Comment:

No changes to the existing underground tanks is proposed.

MEDIATION

REFERRALS

Internal Referral Body	Comments	
Environmental Health (Industrial)	Is the proposal for an industrial use?	YES
	Was sufficient documentation provided appropriate for referral?	NO
	Are the reports undertaken by a suitably qualified consultant?	N/A
	Have you reviewed the Statement of Environmental Effects, and consider ongoing use, such as:	YES
	- Processes with emphasis on potential	

Internal Referral Body	Comments	
	<p>pollution (air, noise, water and land)</p> <ul style="list-style-type: none"> - Hazardous Materials, liquids stored on site - Waste storage, disposal. - Mechanical ventilation 	
	<p>Have you Consider impact of noise, hours of operation, location to nearest residential, location of equipment, times of deliveries, noise management plans, acoustic reports etc.</p>	YES
	<p>If the proposal is a scheduled premises have you recommended that the DAO refer the proposal to OEH?</p>	N/A
<p>General Comments</p> <p>When the original DA 213/2017 was sent to EH to comment the following comments (italicised below) were made. The noise related comments appear not to have been addressed fully prior to or in the Consent Conditions:</p> <p><i>"Environmental Health comments based on information supplied in the DA application:</i></p> <p><i>Site contamination issues appear to have been addressed subject to a condition(which we will add) , as raised by the Alliance EPM report :</i></p> <p><i>Alliance EPM, however, does recommend the following works to be considered as a precaution in the event localised hydrocarbon contaminated soils (e.g. tank backfill sands) and odours are encountered during site upgrade works:</i></p> <p><i>Prior to the commence of site upgrade works, the appointed builder prepares a Construction Environmental Management Plan (CEMP) which sets out roles and responsibilities to manage and mitigate potential hydrocarbon impacted soils and water, odours, stormwater runoff, etc. and other relevant potential disamenity issues. The CEMP should be referenced and included in the appointed builder's Construction Management Plan (CMP) and incorporated into OHS site inductions of all workers and subcontractors.</i></p> <p><i>On completion of upgrade works, a minimum of three (3) groundwater monitoring wells are reinstalled and incorporated into the overall site UPSS Operations Plan (refer to EPA UPSS Guidance and Technical Notes - http://www.epa.nsw.gov.au/clm/upss.htm).</i></p> <p><i>Noise related issues:</i></p> <p><i>It appears the original approval Sept 1962 for a service station has no hours of use but would in those days have assumed traditional business hours for 1962 e.g. 9am to 5pm.</i></p> <p><i>The applicant appears not to have addressed current or proposed</i></p>		

Internal Referral Body	Comments
	<p>operating hours; see below :</p> <p>EIS-</p> <p>"4.2.8.6 Hours of Operation</p> <p>a) Consideration will be given to the protection of acoustical privacy and the amenity of the residential neighbourhood in the determination and approval of hours of operation including hours for service deliveries and collections.</p> <p>b) The appropriate hours of operation will be assessed and determined in the DA process stage with particular regard to the proximity to, and the likely impacts on residential accommodation. Also applicants may be required to provide supporting documentation and/or mitigation measures with a DA to justify hours of operation that are considered by the Council to potentially impact on the neighbourhood. "</p> <p>This is not adequate for us to assess evening , over night and early morning noise to immediate residential premises.</p> <p>Environmental health will require the following information:</p> <p>Hours of operation including all delivery hours (including fuel trucks)</p> <p>If operating post 6pm and pre 6am then particularly the following :</p> <p>An acoustic assessment report and plan of management dealing with noise from:</p> <ol style="list-style-type: none"> 1. Refrigeration motors and air-conditioning 2. Air compressor motor noise 3. Air compressor pressure setting alarm 4. Vehicle noise including closing of doors and hoods, reversing alarms 5. Any footpath metal grates 6. Delivery vehicles" <p>Hours of operation were listed in the Consent being 7am to 10pm Sun to Wed and 7am to 12 midnight Thurs to Sat.</p> <p>I cannot find an acoustic assessment.</p> <p>The approval does not seem to address :</p> <ol style="list-style-type: none"> 1. Refrigeration motors and air-conditioning 2. Air compressor motor noise 3. Air compressor pressure setting alarm 4. Vehicle noise including closing of doors and hoods, reversing alarms 5. Any footpath metal grates 6. Delivery vehicles <p>Outcome:</p> <p>At this late stage the proposed location of the tyre air supply service area ; requiring an acoustic report would be considered by the applicant as unreasonable. A general condition can be added to try and deal with this matter and obtain an appropriate outcome.</p>
	<p>Recommendation</p>

Internal Referral Body	Comments		
	<table border="1" data-bbox="563 421 1331 548"> <tr> <td data-bbox="563 421 1098 548"></td><td data-bbox="1098 421 1331 548">APPROVAL - subject to conditions</td></tr> </table> <p data-bbox="563 548 1331 593">Comments completed by: Anthony Foy EHO</p> <p data-bbox="563 593 1331 638">Date: 11.7.2018</p> <p data-bbox="563 638 1331 683">Assessing Officer's Comment (in Response):</p> <p data-bbox="563 683 1331 1153">In the previous assessment for DA213/2017, it was not considered necessary to address items 1 through 6 identified above by the Environmental Health Officer, as the hours of operation remained the same as per the previous Development Consent No. 130/2012, and the use of the site (being a service station) was not altered or intensified. In this way, no further information regarding noise impacts was considered necessary. Standard conditions requiring compliance with the <i>Protection of the Environment Operations Act 1997</i> and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual were applied to the consent. Noise impacts arising from this modification application are dealt with via those original standard conditions, and via the additional condition of consent recommended by the Environmental Health Officer relating to the use of the tyre air pressure station, modified by the Assessing Officer to read as follows:</p> <p data-bbox="563 1153 1331 1198"><i>Tyre Air Supply Noise</i></p> <p data-bbox="563 1198 1331 1265"><i>Use of the tyre air pressure station is to cease from 7pm nightly and may recommence the following morning at open of business.</i></p> <p data-bbox="563 1265 1331 1400"><i>Reason: To ensure the process of supplying compressed air to tyres does not create a nuisance to any neighbouring premises at night and to maintain residential amenity.</i></p>		APPROVAL - subject to conditions
	APPROVAL - subject to conditions		
Strategic and Place Planning (Heritage Officer)	<p data-bbox="563 1400 1331 1489">There is a major discrepancy between the earlier approved signage and the DCP controls, however, I understand that in case of dispute the previous approval would almost certainly prevail.</p> <p data-bbox="563 1489 1331 1646">Given this, I am of opinion that we can only condition that all areas not specified (annotated as "TBA" in plans) should be painted in 50% grey tones, in order to minimise their visual prominence. Alternatively, the applicants may wish to offer a detailed visual design of these areas.</p> <p data-bbox="563 1646 1331 1691">Assessing Officer's Comment:</p> <p data-bbox="563 1691 1331 1736">A suitable condition has been applied.</p>		
Traffic Engineer	<p data-bbox="563 1736 1331 1825">The proposal seeks to modify the currently approved Service Station to reduce the number of petrol bowsers and also remove the café component.</p> <p data-bbox="563 1825 1331 1870">Traffic:</p> <p data-bbox="563 1870 1331 1975">These alterations are noted as reducing the traffic generation of the site.</p>		

Internal Referral Body	Comments
	<p>Therefore the Traffic Team raise no objection.</p> <p>Parking: The parking provisions are not changing. This is deemed adequate. Traffic Team raises no objection.</p> <p>Car Park: Traffic Team raises no objection.</p> <p>Pedestrian: The layout is a low speed environment. Pedestrian interaction at a service station is deemed adequate. Traffic Team raise no objection.</p> <p>Servicing: As a commercial development, the applicant is required to engage a contracted waste service provider. All servicing must occur onsite. Traffic raise no objection.</p> <p>All previous applicable conditions imposed on the original DA approval will remain.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
NSW Police - Local Command (CPTED)	<p>The NSW Police commented on the proposal as follows:</p> <p><i>"Given the nature of the development we do not believe a Crime Risk Assessment and CPTED (Crime Prevention through Environmental Design) assessment is required."</i></p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. 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 commercial land use.

SEPP 64 - Advertising and Signage

Clauses 8 and 13 of SEPP 64 require Council to determine consistency with the objectives stipulated under Clause 3(1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 1.

The objectives of the policy aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 1 of SEPP 64, the following assessment is provided:

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposed modifications retain the existing use of the site as a service station, and are therefore compatible with the existing and desired future streetscape.	YES
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	No consistent theme for outdoor advertising exists in the locality.	YES
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The proposed modifications to the approved signage do not dominate the streetscape and do not detract from the amenity or visual quality of the site, being within the Pittwater Road Conservation Area.	YES
3. Views and vistas Does the proposal obscure or compromise important views?	The proposed modifications to the approved signage do not obscure or compromise important views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed modifications to the approved signage do not dominated the skyline or reduce the quality of vistas.	YES
Does the proposal respect the viewing rights of other advertisers?	The proposed modifications to the approved signage do not impact upon the viewing rights of other advertisers.	YES
4. Streetscape, setting or landscape Is the scale, proportion and form of the	The scale, proportion, and form of the proposed modifications to the approved signage are	YES

proposal appropriate for the streetscape, setting or landscape?	appropriate for the streetscape.	
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed modifications to the approved signage have been designed in a clear and modern manner, and therefore create visual interest within the streetscape.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposed modifications to the approved signage are simplified in that only business identification and fuel prices are displayed.	YES
Does the proposal screen unsightliness?	The subject site does not contain any unreasonable unsightliness.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed modifications to the approved signage do not protrude above any buildings, structures, or tree canopies.	YES
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The scale, proportion, and form of the proposed modifications to the approved signage are consistent with and complementary to the use of the site as a service station.	YES
Does the proposal respect important features of the site or building, or both?	Previously existing structures on site have been demolished in accordance with Development Consent No. 213/2017.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The signage proposed to be modified is for business identification and display of fuel prices only, so does not require innovation or imagination. However, the signage remains located logically to achieve an adequate level of exposure, while remaining visually compatible with the building and streetscape.	YES
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	The signage proposed to be modified is internally illuminated and do not require any safety devices or platforms.	YES
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	The dimensions of the illuminated portions of signage are minimal, so would not cause unacceptable or unreasonable glare, safety concerns, or unreasonable amenity impacts to nearby residences.	YES
Can the intensity of the illumination be adjusted, if necessary?	The illumination of the signage is minimal, so is not anticipated to require adjustment.	YES
Is the illumination subject to a curfew?	The signage is to be illuminated only during hours of operation, as required by Condition No. ANS08 applied to Development Consent No. 213/2017.	YES

8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The proposed modifications to the approved signage would not reduce the safety of any public road, pedestrians, or bicyclists, as the signage is located clear of footpaths and roadways.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposed modifications to the approved signage do not obscure sightlines.	YES

Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of the SEPP and its underlying objectives.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Shop: 4.5m Canopy: 6m Sign: 6.85m	Unchanged	N/A	Yes

Floor Space Ratio	1:1	0.16:1 (177sqm)	0.169:1 (189sqm)	N/A	Yes
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Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1,117.2sqm	Requirement	Approved	Proposed	Complies
4.1.4.1 Street Front Setbacks	0m	0m	0m to north and west 1m to east	Yes
Schedule 3 Parking and Access	Service station: 1 space per 40sqm of gross floor area (5 spaces) Café: 1 space per 40sqm serviced area (0 spaces)	9 spaces	9 spaces	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.6 Accessibility	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	Yes	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	Yes	Yes
4.2.8 Neighbourhood Centres (LEP Zone B1)	Yes	Yes
4.2.8.1 Height	Yes	Yes
4.2.8.2 Setbacks	Yes	Yes
4.2.8.5 Carparking, Vehicular Access and Loading Controls	Yes	Yes
4.2.8.8 Waste Management	Yes	Yes
4.2.8.9 Signage	Yes	Yes
4.2.8.10 Local Character provisions	Yes	Yes
4.4.3 Signage	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.2 Pittwater Road Conservation Area	Yes	Yes

Detailed Assessment

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

The proposal is consistent with this control. However, a number of submissions have raised concerns regarding noise nuisance. The proposed modifications are acceptable in relation to the relevant objectives of this clause, as follows:

Objective 1) To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.

The proposal is consistent with the requirements of the Manly DCP 2013 in relation to privacy, views and solar access. In relation to noise, original conditions of consent, and additional conditions of consent recommended with this modification application ensure that the demolition and construction

required for the development, and the ongoing use of the premises/property must not give rise to 'offensive noise' as defined under the provisions of the *Protection of the Environment Operations Act 1997*. As such, the amenity of existing and future residents is protected and impacts of the development are minimised.

Objective 2) To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.
Not applicable.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

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

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

Comments:

In this case, the proposed development is likely to increase the demand for public amenities and public services within the area. Accordingly, suitable conditions have been included within the recommendation requiring payment of a section 94 contribution of \$3,364.36 in line with Manly Section 94 Contributions Plan.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;

- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0324 for Modification of Development Consent DA0213/2017 granted for Demolition works and construction of a new service station on land at Lot 2 DP 2427,133 - 139 Pittwater Road, MANLY, Lot 3 DP 2427,133 - 139 Pittwater Road, MANLY, Lot 4 DP 2427,133 - 139 Pittwater Road, MANLY, Lot 1 DP 2427,133 - 139 Pittwater Road, MANLY, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA102 Site Plan	20 June 2018	Swanbury Pe
DA103 Shop Plan	20 June 2018	Swanbury Pe
DA104 Canopy Layout	20 June 2018	Swanbury Pe
DA201 Elevations	20 June 2018	Swanbury Pe
DA202 Elevations	20 June 2018	Swanbury Pe
DA203 Elevations	20 June 2018	Swanbury Pe
DA301 Sections and Screenscape	20 June 2018	Swanbury Pe

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

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
DA Landscape Concept	21 June 2018	Monaco Desi

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

B. Add Condition ANS12 to read as follows:

Development Contribution - Commercial

A contribution is to be paid for the provision, extension or augmentation of traffic and parking,

environmental programs, streetscape and landscaping, community facilities and administration that will, or are likely to be, required as a consequence of development in the area.

Total contribution for this development for MOD2018/0324 Modification of Development Consent DA0213/2017 granted for Demolition works and construction of a new service station is currently \$3,364.36. The amount of the payment shall be in accordance with the contribution charges as at the date of the payment. The charges may vary at the time of payment in accordance with Council's Contributions plan to effect changes in land values, construction costs and the Consumer Price Index.

This contribution shall be paid to Council prior to the release of the Construction Certificate and the amount payable shall be in accordance with Council's Contributions Plan effective July 2009 as follows;

TOTAL: \$28,036.34 per 100m² GFA

The calculations for MOD2018/0324 are as follows:

Additional Floor Area = 12m²
\$28,036.34 x 12m² divided by 100
= \$3,364.36

Total Contribution applicable = \$3,364.36

Note: Contribution fees are adjusted on the 1st July each year and are based on the March CPI figures.

Reason: To enable the provision of public amenities and services required/anticipated as a consequence of increased demand resulting from the development.

C. Add Condition ANS13 to read as follows:

Eastern Elevation Finish Colour

The eastern elevation of the service station shop (annotated as 'FINISH TBA') is to be finished with 50% grey tones. Details demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To reduce the visual prominence of the development and ensure consistency with the Pittwater Road Conservation Area (DACHECPCC1)

D. Add Condition ANS14 to read as follows:

Tyre Air Supply Noise

Use of the tyre air pressure station is to cease from 7pm nightly and may recommence the following morning at open of business.

Reason: To ensure the process of supplying compressed air to tyres does not create a nuisance to any neighbouring premises at night and to maintain residential amenity.

E. Add Condition ANS15 to read as follows:

Service Vehicles

All servicing of the site is to be undertaken wholly within the site boundary.

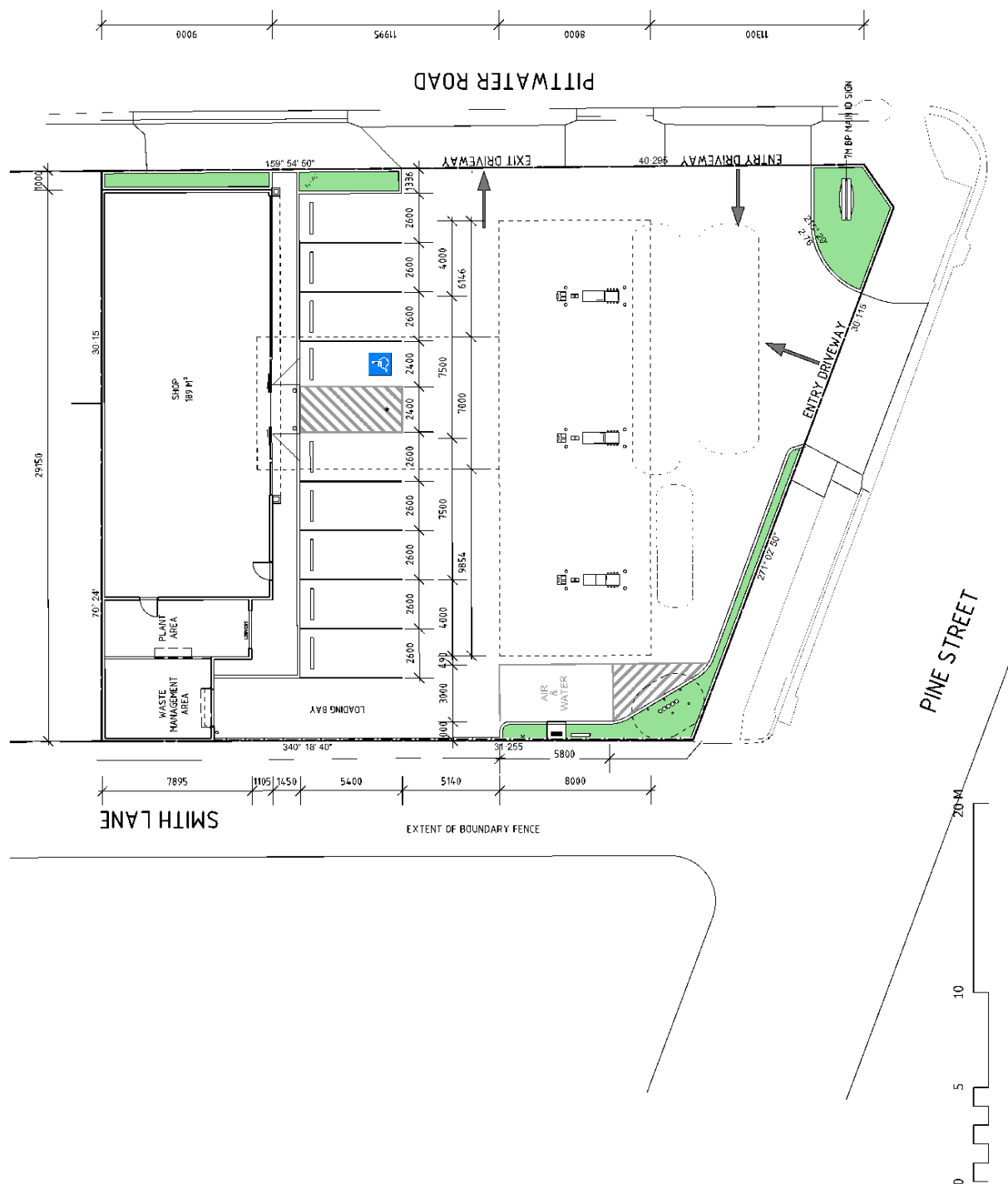
Reason: To ensure safe servicing of the site and minimise impact on on-street parking. (DACTRGOG1)

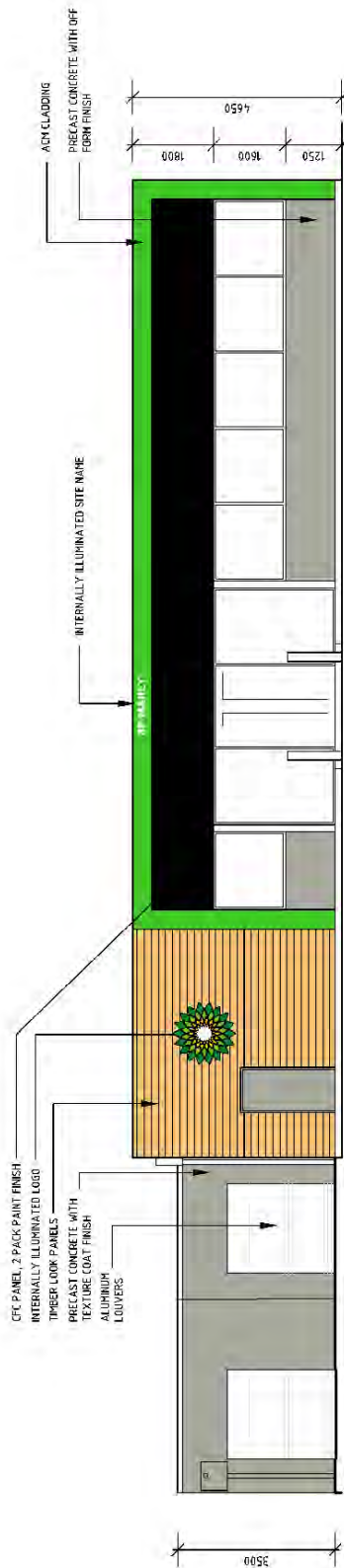
**swanbury
penglase**
architects of
human space



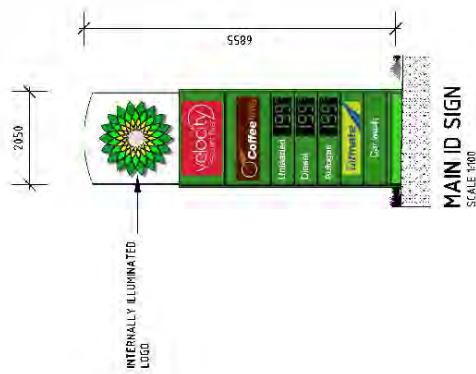
LEGEND

LANDSCAPE AREA
TOTAL = 62m2
PERCENTAGE = 5.5%



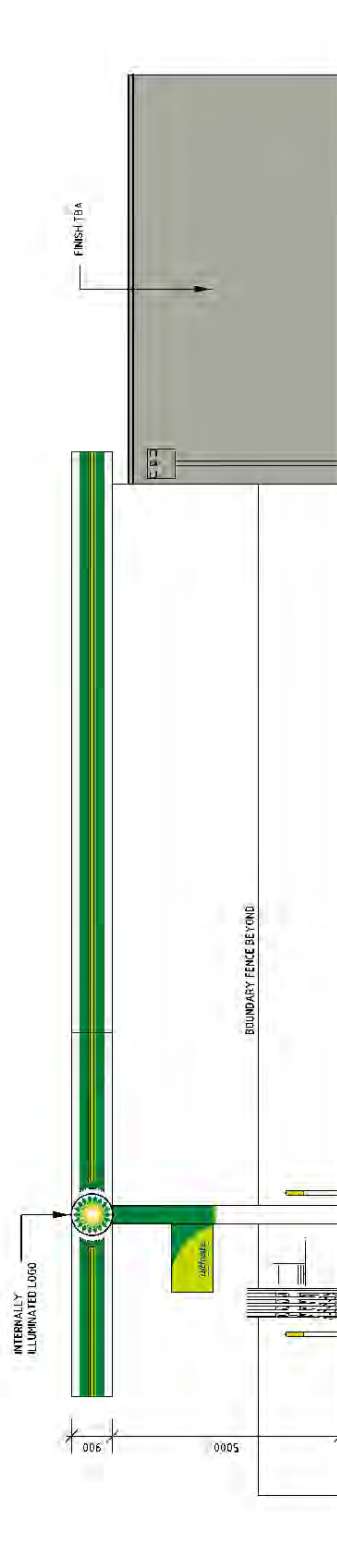


SHOP FRONT ELEVATION
SCALE 1:100

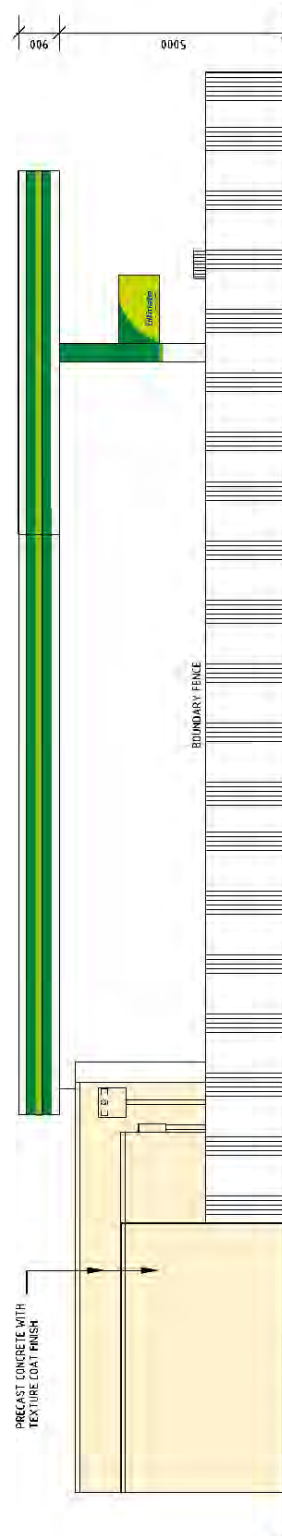


ELEVATIONS @ A3
JASBE MANLY - PROPOSED SERVICE STATION AT 133-139 PITTPATER ROAD MANLY, NSW 2095

© SWANBURY PENGGLASE ARCHITECTS. A/CN. 003-210-775. 2-44 GRIFFIN ST. A/CN. 017-3162. T/FN. (08) 8717-2179. F/N. (08) 8717-3162. info@swanburypenglase.com www.swanburypenglase.com



EAST ELEVATION
SCALE 1/100

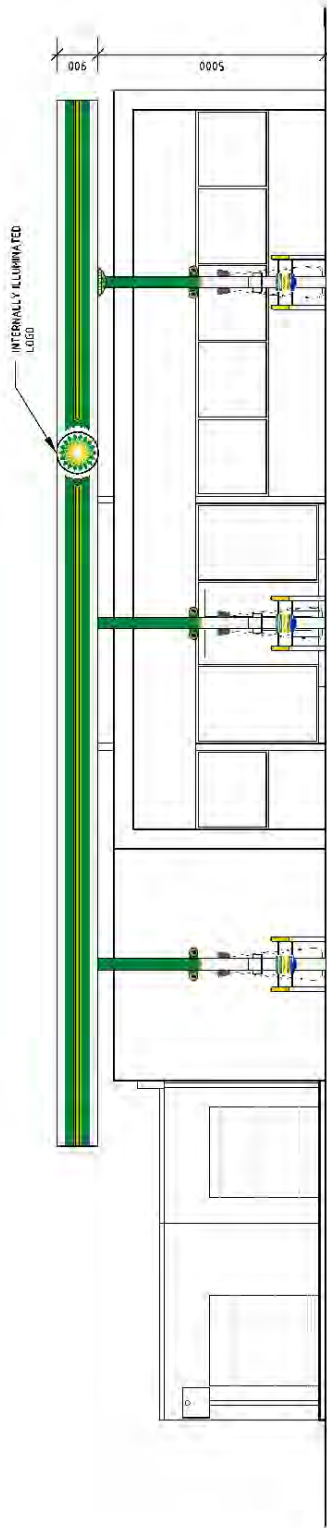


WEST ELEVATION
SCALE 1/100

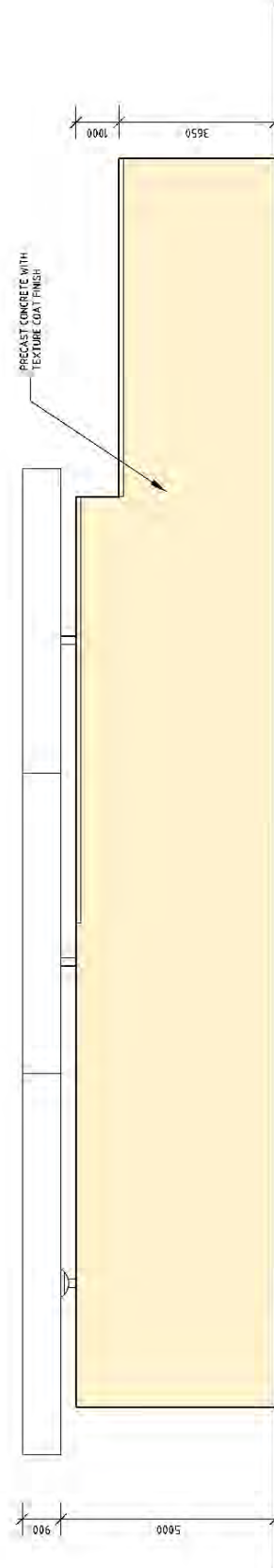


ELEVATIONS @ A3
JASBE MANLY - PROPOSED SERVICE STATION AT 133-139 PITTPATER ROAD MANLY, NSW 2095

© SWANBURY PINGLASE ARCHITECTS. A/CN. 008 310 775. 244 GLENVIEW ST. A/CN A/CN 54 5000. TEL (08) 8117 3162. FAX (08) 8117 3162. info@swanburypinglase.com www.swanburypinglase.com



SOUTH ELEVATION
SCALE 1:100



NORTH ELEVATION
SCALE 1:100



ELEVATIONS @ A3

JASBE MANLY - PROPOSED SERVICE STATION AT 133-139 PITTWATER ROAD MANLY, NSW 2095

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20 JUNE 2018
18092 DA201

ITEM 3.5**DA2018/0890 - 404 SYDNEY ROAD, BALGOWLAH -
DEMOLITION WORKS AND THE CONSTRUCTION OF A SHOP
TOP HOUSING DEVELOPMENT****REPORTING OFFICER****Rodney Piggott****TRIM FILE REF****2018/645314****ATTACHMENTS**

- 1 Assessment Report**
- 2 Plans**
- 3 Clause 4.6**
- 4 Perspectives**

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, the development contravenes a development standard imposed by an environmental planning instrument by more than 10% and it is a development to which *State Environmental Planning Policy No 65 – Design Quality of Residential. Apartment Development* applies and is 4 or more storeys in height.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2018/0890 for demolition works and the construction of a shop top housing development at Lot 1 and Lot 2 DP 151519, 404 Sydney Road, Balgowlah subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/0890
Responsible Officer:	Luke Perry
Land to be developed (Address):	Lot 2 DP 151519, 404 Sydney Road BALGOWLAH NSW 2093 Lot 1 DP 151519, 404 Sydney Road BALGOWLAH NSW 2093
Proposed Development:	Demolition Works and construction of a shop-top housing development
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Smith Property Nominees Pty Ltd
Applicant:	Carl Peterson HPG Balgowlah Projects Pty Ltd
Application lodged:	29/05/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	01/06/2018 to 20/06/2018
Advertised:	02/06/2018
Submissions Received:	17
Recommendation:	Approval
Estimated Cost of Works:	\$ 8,360,000.00

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 4.2.6.1 Wall Height on the Street Frontage

SITE DESCRIPTION

Property Description:	<p>Lot 2 DP 151519 , 404 Sydney Road BALGOWLAH NSW 2093</p> <p>Lot 1 DP 151519 , 404 Sydney Road BALGOWLAH NSW 2093</p>
Detailed Site Description:	<p>The subject site consists of two allotments located on the northern side of Sydney Road and the eastern side of Woodland Street (North), Balgowlah.</p> <p>The site is regular in shape with a frontage of 21.94m along Sydney Road, 42.67m along Woodland Street (North) and a depth of 21.94m. The site has a surveyed area of 936.4m².</p> <p>The site is located within the B2 Local Centre zone and accommodates a one, two and three storey commercial building with car parking located off Woodland Street (North). The existing building is currently occupied by a ground floor retail premises (Porters Liquor) and office premises on the first and second floors. The building also accommodates roof top telecommunications plant. A mature street tree is located on the Sydney Road frontage adjacent to the retail premises.</p> <p>The site abuts a right of carriageway along the northern boundary which provides pedestrian access east to Totem Lane.</p> <p>The site has been retained at its northern edge by an approximately 3 metre high retaining wall to provide a flat car parking level off Woddland Street (North).</p> <p>The site is located at the western most edge of the 'Balgowlah Town Centre' as identified on the maps (Map 2B) contained within Schedule 2 - Townscape Principles of the</p>

Manly DCP 2013. The maps also identify this site as a 'important corner'.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by a mix of residential accommodation and commercial buildings. The subject site has an interface with another land use zone identified within the Manly LEP 2013. To the west and the immediate south of the site is land zoned R1 General Residential zone which is predominantly characterised by single dwelling houses in landscaped settings.

Adjoining the site to the east and to the south east (approximately 70 metres south-east) on the southern side of Sydney Road is land zoned B2 Local Centre which forms part of the 'Balgowlah Town Centre'. Development located within the town centre is predominantly characterised by a mix commercial and shop top housing developments varying between 3 to 5 storeys in height.

To the north east of the subject site is the 'Totem Development' which is up to 8 storeys in height and comprised of a mix of commercial uses on the lower levels, including a shopping centre, gymnasium and a number of restaurant and cafes, with residential apartments located on the floors above.

Map:



SITE HISTORY

Pre Lodgement Meeting (PLM2018/0023)

A pre lodgment meeting was held on 20 March to discuss a proposal for demolition works and construction of a shop top housing development. The pre lodgement meeting plans proposed a building that 5 storeys in height when viewed from the corner of Sydney Road and Woodland Street (North). The resultant built form would likely cast shadows onto the buildings and front yards of the dwellings houses located to the south of the site.

The meeting notes provide the following concluding comments:

'In summary, the proposal in its current form presents a building height that results in unreasonable visual and amenity impacts on adjoining properties.'

The height of the building is to be reduced to achieve consistency with the underlying objectives of Clause 4.3 of MLEP 2013.

Any variation will require the submission of a written request seeking to justify the contravention in accordance with the requirements of Clause 4.6 of MLEP 2013.'

The subject application has adopted the recommendations contained within the meeting notes and provided a greater setback of the upper most floor from the boundaries of the site and floors below reducing the visual impact and overshadowing on adjacent properties to the south.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for demolition works and construction of a shop top housing development comprising three levels of basement car parking, ground floor retail premises and 17 apartments.

Specifically the works involve:

Basement Levels (1 to 3)

- Car parking for 31 vehicles (11 retail spaces, 17 residential spaces and 3 visitor spaces);
- Storage rooms;
- Lift and stairwell access/egress; and
- Waiting bay and driveway ramp.

Ground Floor

- Retail premises (404m² GLFA);
- Loading dock;
- Entry lobby;
- Retail storage and bin rooms;
- Residential bin rooms; and
- Lift and stairwell access/egress.

First Floor

- 2 x 1 bedroom apartments;

- 4 x 2 bedroom apartments;
- Landscaped courtyards; and
- Lift and stairwell access/egress.

Second Floor

- 2 x 1 bedroom apartments;
- 4 x 2 bedroom apartments; and
- Lift and stairwell access/egress.

Third Floor

- 2 x 2 bedroom apartments;
- 2 x 3 bedroom apartments; and
- Lift and stairwell access/egress.

Fourth Floor

- 1 x 3 bedroom apartment; and
- Lift and stairwell access/egress.

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&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</p>

Section 4.15 Matters for Consideration'	Comments
	<p>building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. / 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 matter may be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) 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	The site is considered suitable for the proposed

Section 4.15 Matters for Consideration'	Comments
site for the development	development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 17 submission/s from:

Name:	Address:
Ms Victoria Jane Willman	3 Plant Street BALGOWLAH NSW 2093
Mr Tarek Bisher	49 Upper Beach Street BALGOWLAH NSW 2093
Mr Mark Andrew Oakey	193 Woodland Street BALGOWLAH NSW 2093
Mr David Ferguson	
Mr Roger Quentin Freney	24 Wanganella Street BALGOWLAH NSW 2093
Mr Anthony Horden Bull	669 Woodhill Mountain Road BERRY NSW 2535
Mr John Malcolm Travis	8 Clarence Street BALGOWLAH NSW 2093
Mr Frederick Anthony Van Der Heide	2 / 10 Jackson Street BALGOWLAH NSW 2093
Mrs Sharyn Marie McKay	23 Jackson Street BALGOWLAH NSW 2093
Mr Owen Edwin Felsman	1 / 147 Condamine Street BALGOWLAH NSW 2093
Mr Ian Henry Sharp	5 / 1 West Street BALGOWLAH NSW 2093
Ms Lisbeth Jane Rankin	88 Woodland Street BALGOWLAH NSW 2093
Mr Terrance Keith Le Roux	3 / 6 Jackson Street BALGOWLAH NSW 2093
Mr Peter John Stephenson	5 / 174 - 176 Sydney Road FAIRLIGHT NSW 2094
Ms Diane Willman	49 Upper Beach Street BALGOWLAH NSW 2093
Mr Chris Gow	3/16 Boyle Street BALGOWLAH NSW 2093
Mr Michael Ford	321 Sydney Road BALGOWLAH NSW 2093

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

- **Building height, character of the area and bulk and scale**
- **Wall height**

- Privacy
- Precedent

The matters raised within the submissions are addressed as follows:

Building height, character of the area and bulk and scale

There are concerns that the proposed building height is excessive and does not comply with the maximum building height control or Clause 4.6 of Manly LEP 2013. Further concerns raise that the bulk and scale of the development will be out character for the area and excessive.

Comment:

The matter of non compliance with the Height of Buildings Development Standard is addressed in detail elsewhere in this report (refer to cl 4.6 Exceptions to Development Standards under the Manly LEP 2013 section of this report).

In summary, the assessment of this application has found that the development achieves consistency with the underlying objectives of Clause 4.3 and Clause 4.6 of the Manly LEP 2013 and that there is sufficient environmental planning grounds to justify and support the variation in this instance.

The siting of the building on the site, proposed building setbacks and resultant bulk and scale are considered to be appropriate in this context and satisfy the requirements and objectives of cl 3.1.3 Townscape (Local and Neighbourhood Centres), cl 4.2.3 Setback Controls in LEP Zones B1 and B2 and cl 4.2.6 Balgowlah Local Centre of MDCP 2013.

These matters does not warrant refusal of the application.

Wall height

There are concerns that the proposed wall height on the street frontages does not comply with the 10.5m limit prescribed under cl 4.2.6.1 Wall Height on the Street Frontage under Manly DCP 2013.

Comment:

This matter is addressed in detail elsewhere within this report (refer to cl 4.2.6.1 Wall Height on the Street Frontage under Manly DCP 2013).

In summary, the proposed wall height is considered appropriate in this circumstance and is supported.

This matter does not warrant refusal of the application.

Privacy

There are concerns that the proposed windows located on the northern side of the first and second floors will overlook the front yard of the adjoining terrace to the north.

Comment:

Unit No. 104 and 204 of the proposed development have 3 high sill, north facing windows that serve the living/dining room, kitchen and ensuite. The windows serving the kitchen and ensuite do not have an outlook onto the front yard of the adjoining terrace as they are located adjacent to the blank wall of the terrace. The window serving the living/dining room, while high sill, does provide the opportunity to overlook the front yard of the adjoining terrace.

In this regard, a condition has been included in the recommendation of this report requiring the window serving the living/dining room of Unit. No. 104 and 204 to be finished in obscured glazing.

This matter has been satisfactorily addressed by the imposition of a condition of consent.

Precedent

There are concerns that the approval of this application would set a precedent for other development applications in the future.

Comment:

The assessment of this application has found the development to satisfy the underlying aims and objectives of the relevant planning legislation including the EPA Act, SEPP 65 and the ADG, Manly LEP 2013 and Manly DCP 2013 and is recommended for approval in this instance.

Each development application is assessed on its merits in accordance with the EPA Act and the matter of precedent is not a relevant matter of consideration.

This matter does not warrant refusal of the application.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been reviewed by Council's Building Assessment Team who have provided the following comments:</p> <p><i>'The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.'</i></p> <p><i>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.'</i></p>
Landscape Officer	<p>The application has been reviewed by Council's Landscape Officer who raises no objections to the proposed development subject to conditions included in the recommendation of this report.</p>
NECC (Development Engineering)	<p>The application has been reviewed by Council's Development Engineer who has provided the following comments:</p> <p>'Original referral:</p> <p><i>The proposed driveway crossings have been assessed. However, the second driveway crossing, serves the basements, does not comply with the Council specification and AS2890.</i></p> <p><i>The basement entry level is RL 46.07 which is about 720 mm lower than the existing gutter invert (RL46.79) on Woodland Street. Also, an existing 1.2m wide footpath, which is on RL 46.00, is located</i></p>

Internal Referral Body	Comments
	<p>about 4 m away from the street kerb. It means the average gradient of the proposed driveway, between the new layback and existing footpath, will be about 20 % (1V: 5H). It does not comply with AS 2890 and Council's standard.</p> <p>The applicant shall re-design the driveway crossing or the entry level of the basement. A design of the crossing with detailed long sections shall be submitted for assessment. Where other alternation are proposed on Council's infrastructures (such as Kerb +Gutter and footpaths) , the details sections of gradients and level are to be provided.</p> <p>If the driveway/ basement needs to be re-designed, it will make a significant change to the design. As such, Development Engineer cannot support the application prior to the resolve of the driveway entry.'</p> <p>2nd engineering referral An amended driveway design has been received on 17/8/2018. The applicant proposed a planter box and stair case to be built on road reserve to accommodate their proposal to change the level of road reserve.</p> <p>Development Engineer has discussed with Council's Transport and Civil infrastructure Asset section about the proposed amendment on road reserve along Woodland Street. However, We both cannot accept the proposal.</p> <p>The proposed planter box and stair will limit the accessibility of the owners of No. 162, 162 A, 162 B and 162 C woodland Street, who travel on the existing footpath between Woodland Street from Sydney Road without obstruction at the moment. The change impacts on these owner significantly. Council will not support the change to the public road reserve to accommodate a private development.</p> <p>Also, these structures lead the additional maintenance costs and issues on the road reserve in the future.</p> <p>Given the above, Development Engineers cannot support the proposed planter box and stair to be built on road reserve to accommodate the driveway. As the vehicle access of development proposal relies upon the new planter box and stair on road reserve, the applicant shall relocate the driveway in a more suitable location to maintain the same level of pedestrian accessibility on Woodland Street.</p> <p>3rd engineering referral A revised plan was submitted on 25/9/2018. The plan has been assessed. Development Engineer still cannot support the development as the previous reason.</p>

Internal Referral Body	Comments
	<p><i>The following conditions are requested. They are provided under the assumption that an approval is granted to install the proposed retaining structure, footpath amendment and stair on the road reserve.</i></p> <p><i>The proposed footpath amendment, retaining wall and stair shall be referred and assessed by Council's Transport and Civil infrastructure Asset (TCI) section. If the approved cannot be granted by TCI, please ignore the conditions and refer back to Development Engineering.'</i></p> <p><u>Assessment Officers comment:</u> The proposed footpath amendment, retaining wall and stair provides reasonable and appropriate access to and from the development and the adjacent residential properties. The proposed footpath arrangements and works within the road reserve are appropriate and facilitate safe vehicular access to the development while maintaining an accessible footpath along Woodland Street (North). The proposal has been appropriately conditioned to ensure an application for works within the road reserve is required prior to construction which includes the requirement of detailed engineering drawings to be submitted to Council's Road Assets team for assessment and approval.</p>
Traffic Engineer	<p>The application has been reviewed by Council's Traffic Engineer who has provided the following comments:</p> <p>General: <i>Dimensions of the waste vehicle have not been provided. Applicant shall ensure loading of removalist trucks shall occur from the loading bay. A loading bay management plan will need to stipulate this requirement to ensure that tenants can occupy the building without impacting street amenity.</i></p> <p>Traffic: <i>The consultant has identified an existing generation of 12 vehicles in the AM Peak and 18 in the PM. Council Traffic Staff have identified alternative figures, however the consultants values are conservative and hence will be accepted.</i></p> <p><i>The proposed development is expected to generate an additional 10 vehicles in the PM Peak period. This equates to one (1) additional vehicle every 6 minutes. This is considered negligible on the local network. Traffic raises no objection.</i></p> <p>Parking: <i>Parking is adequate.</i></p> <p>Car park: <i>The ramp grades are deemed adequate. Aisle widths are adequate. Parking bay dimensions are adequate.</i></p>

Internal Referral Body	Comments
	Pedestrian: <i>Pedestrian accessibility to the street and within the basement levels is deemed adequate.</i>
Waste Officer	The application has been reviewed by Council's Waste Officer who raises no objection to the proposed development subject to conditions which have been included in the recommendation of this report.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid who provided a response by letter dated 10/07/2018 objecting to the development due to potential for the development impact upon to overhead powerlines located on Woodland Street.</p> <p>The applicant responded to Ausgrid's letter of objection to the proposed development by submitting additional information for Ausgrid's assessment on 27/10/2018.</p> <p>The additional information was reviewed by Ausgrid who provided a response on 01/08/2018 raising no objections to the proposed development stating its satisfaction with the alternative options provided by the applicant.</p>
Concurrence - NSW Roads and Maritime Services - (SEPP Infra. Traffic generating dev)	The proposal was referred to NSW Roads and Maritime Services who provided a response by letter dated 20/06/2018. The RMS raise no objections to the proposed development subject to conditions which have been included in the recommendation of this report.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential / 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 / commercial 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 a 5 storey residential flat 'housing' development plus basement car parking for the provisions of 17 self-contained dwellings.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

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

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

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

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

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

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

Comment:

The subject site is located within an established local centre in Balgowlah. Development located within the town centre is predominantly characterised by a mix of commercial and shop top housing developments varying between 3 to 5 storeys in height.

To the north east of the subject site is the 'Totem Development' which is up to 8 storeys in height and comprised of a mix of commercial uses on the lower levels, including a shopping centre, gymnasium and a number of restaurant and cafes, with residential apartments located on the floors above. There are a number of sites that are currently occupied by older style two storey commercial/shop top housing developments which it can be reasonably expected will be redevelopment.

The proposed building, a five storey shop top housing building, appropriately responds to, and fits comfortably within, this context. The design of the building will enhance the qualities of the area and is reflective of a modern shop top housing development which is a high quality design.

The development satisfies this Principle.

Principle 2: Built Form and Scale

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

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

Comment:

The proposed building achieves a scale, bulk and height that is appropriate to the existing and desired future character of the street and surrounding buildings. The design appropriately acknowledges the sites role as a 'gateway site' at the western entry point into the Balgowlah Local Centre. The development provides a built form and scale that is reflective of its important corner location and is contextually appropriate when viewed in the context of other recently constructed developments within the local centre.

The building is highly articulated and provides effective manipulation of balconies and recessed building walls to provide visual interest and relief when viewed from the public domain and surrounding properties.

The development satisfies this Principle.

Principle 3: Density

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

Appropriate densities are consistent with the area's existing or projected population. Appropriate

densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment:

The design of the building affords future residents a high level of amenity. The resultant density is therefore appropriate to the site and its context given its location to existing infrastructure, services, public transport, location within the Balgowlah Local Centre and ease of access to community facilities and the surrounding environment.

The development satisfies this Principle.

Principle 4: Sustainability

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

Comment:

The design of the building allows for adequate natural cross ventilation and sunlight for the amenity and liveability of future residents and provides passive thermal design for ventilation, heating and cooling which will reduce the reliance on technology and operation costs.

The application is supported by a Waste Management Plan which includes suitable details for the disposal and recycling of demolition and excavation materials should the application be approved.

In addition, a BASIX certificate has been submitted with the application. The certificate confirms that the development is capable of achieving the water and energy targets and has obtained a pass for thermal comfort.

The development satisfies this Principle.

Principle 5: Landscape

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

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

Comment:

There is no minimum landscaped open space provision required for such development within this zone. This is due to the dense urban environment and envisaged character of development in the Balgowlah Local Centre.

Therefore, due to the urban context within which this site is located, minimal landscaping has been provided at ground level. Areas of landscaping have been provided at first floor level and incorporated

into planter boxes throughout the development. The landscape regime is considered to be well designed and located and will enhance the internal amenity of the development.

The development satisfies this Principle.

Principle 6: Amenity

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

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

Comment:

The design of the building provides sufficient amenity for future residents and residents in neighbouring properties. A sufficient level of sunlight, natural ventilation, views, privacy and private open space is afforded to future dwelling occupants and maintained for occupants of surrounding residential properties. Further, as detailed below, the development satisfies the Apartment Design Guidelines that relate to internal and external amenity.

The development satiates this Principle.

Principle 7: Safety

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

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

Comment:

Generally, the development provides well designed and secure access to vehicular and pedestrian access points to both the retail and residential components of the development. All apartments provide balconies and windows which provides passive surveillance to either Sydney Road or Woodland Street (North).

The development satisfies this Principle.

Principle 8: Housing Diversity and Social Interaction

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

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

Comment:

The provision of a mix of one, two and three bedroom apartments in this location is considered

reasonable due to the site's close proximity to public transport, commercial facilities and opportunities within the Balgowlah Local Centre.

The development satisfies this Principle.

Principle 9: Aesthetics

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

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

Comment:

The proposed development exhibits a high standard of architecture and overall aesthetics, which will contribute positively to the streetscape of Sydney Road and Woodland Street (North) and the Balgowlah Local Centre. The development provides a contextually appropriate built form for this important corner site.

The building provides a modern and contemporary form with a well-considered use of physical and material articulation and modulation to provide a front facade that will contribute to the Sydney Road and Woodland Street (North) streetscapes.

The development satisfies this Principle.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Consistent The development responds to and relates favourably to its context and 'gateway' location within the Balgowlah Town Centre. The height, bulk and scale is consistent with that of surrounding and recently constructed development within the town centre and represents a design excellence envisaged for this important corner and gateway to the town centre.

		The siting of the development is appropriate so as to ensure the visual impact and amenity impacts are effectively minimised on the public domain and surrounding properties.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Consistent The development responds to the Sydney Road and Woodland Street (North) streetscape and the site to optimise solar access to internally to the proposed apartments and to neighbouring properties allowing for a reasonable level of solar access to be maintained given the constraints of the surrounding built environment.
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	Consistent The development provides an appropriate transition between the public and private domain without compromising safety and security. The development provides further and enhanced street level activation through the introduction of activation on both street frontages thereby enhancing the amenity of the public domain.
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	Consistent (on merit) The development does not provide any areas of communal or public open space. The ADG provides the following design guidance where development is unable to achieve the design criteria:

		<p><i>Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:</i></p> <ul style="list-style-type: none"> <i>• provide communal spaces elsewhere such as a landscaped roof top terrace or a common room</i> <i>• provide larger balconies or increased private open space for apartments</i> <i>• demonstrate good proximity to public open space and facilities and/or provide contributions to public open space</i> <p>The subject site is located within a business zone which limits the ability for communal or public open space to be provided on site.</p> <p>To overcome this shortfall, each residential apartment has been designed to provide larger balconies and areas of open space above the minimum requirements of the ADG.</p> <p>In this regard, the development provides sufficient areas of open space for the use of future dwelling occupants.</p>
Deep Soil Zones	Deep soil zones are to meet the following minimum	Consistent (on merit)

requirements:

Site area	Minimum dimensions	Deep soil zone (% of site area)
Less than 650m ²	-	7%
650m ² – 1,500m ²	3m	
Greater than 1,500m ²	6m	
Greater than 1,500m ² with significant existing tree cover	6m	

The required amount of deep soil zone is 65.54 sqm (7% of site area).

The development provides 32.4 sqm of deep soil zone (3% of site area).

The design guidance provided with this part of the ADG states:

Achieving the design criteria may not be possible on some sites including where:

- *the location and building typology have limited or no space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in centres)*
- *there is 100% site coverage or non-residential uses at ground floor level*

Where a proposal does not achieve deep soil requirements, acceptable stormwater management should be achieved and alternative forms of planting provided such as on structure.

The subject site is located within a local centre and business zone and therefore opportunities to achieve the required deep soil zone are limited.

Notwithstanding the technical non-compliance with the design criteria, the

		development provides acceptable stormwater management and provides adequate areas of on structure planting throughout.												
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>Consistent</p> <p>The intent of this design guide is to allow residents within an apartment development and on adjacent properties to use their private open space without being unreasonably overlooked. Visual privacy balances site and context specific design solutions with views, outlook, ventilation and solar access.</p> <p>The design criteria also specifies that no separation is required between blank walls.</p> <p>The development is located within the B2 Local Centre zone which allows development to be built to the boundaries of the site. The development also has two street frontages.</p> <p>In this regard, any future development to the east of the subject site should be constructed with a nil setback to the side boundaries of the site, consistent with surrounding and recent development in the local centre and as prescribed under Part 4 of MDCP 2013.</p> <p>The proposed development has been designed to ensure adequate physical separation is provided</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												

		<p>between the development and any future development east of the site by setting back to the habitable areas a minimum 6 metres from the eastern side boundary to protect overlooking to and from any future development to the east.</p> <p>In this regard, the development provides adequate separation between buildings.</p>
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>Consistent</p> <p>The pedestrian entryway is located through the centre of the building on Woodland Street (North) adjacent to the driveway and retail premises making it easily identifiable and addressing the public domain.</p>
Vehicle Access	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p>Consistent</p> <p>Council's Traffic Engineer has reviewed the proposed traffic and vehicle access and raises no objections to the proposal, subject to conditions.</p> <p>The vehicle access point is considered to be the most suitable upon the site to minimise conflicts between pedestrians and vehicles.</p>
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre 	<p>Consistent</p> <p>The proposal provides adequate provisions for bicycle and car parking in accordance with requirements of MDCP 2013.</p>

	<p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>									
Part 4 Designing the Building										
Amenity										
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none">Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter	<p>Consistent</p> <p>76% (13 of 17 apartments) of the proposed apartments living rooms and private open spaces receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid winter.</p>								
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none">At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	<p>Consistent</p> <p>71% (12 of the 17 apartments) of the proposed apartments are natural cross-ventilated.</p>								
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td></td><td></td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m			<p>Consistent</p> <p>The development provides a satisfactory minimum finished floor to finished ceiling level throughout.</p>
Minimum ceiling height										
Habitable rooms	2.7m									
Non-habitable	2.4m									

	<table><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>If located in mixed used areas</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr></table>	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area					
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If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area											
Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p> <p>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none">3.6m for studio and 1 bedroom apartments	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>Consistent</p> <p>The architectural plans submitted with the application indicate that proposed apartments satisfy the minimum dimensions and areas specified for internal areas of the apartments.</p>
Apartment type	Minimum internal area											
Studio	35m ²											
1 bedroom	50m ²											
2 bedroom	70m ²											
3 bedroom	90m ²											

	<ul style="list-style-type: none">4m for 2 and 3 bedroom apartments <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>																
Private Open Space and Balconies	<p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	<p>Consistent</p> <p>The architectural plans submitted with the application indicate that each apartment within the development has a satisfactory minimum balcony area and private open space areas.</p>
Dwelling Type	Minimum Area	Minimum Depth															
Studio apartments	4m ²	-															
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
Common Circulation and Spaces	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<p>Consistent</p> <p>The maximum number of apartments accessible off of a single circulation core is six.</p>															
Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	<p>Consistent</p> <p>The architectural plans submitted with the application indicate that the development provides adequate storage areas for each residential apartment.</p>					
Dwelling Type	Storage size volume																
Studio apartments	4m ²																
1 bedroom apartments	6m ²																
2 bedroom apartments	8m ²																
3+ bedroom apartments	10m ²																
Acoustic Privacy	<p>Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.</p>	<p>Consistent</p> <p>The central circulation core is adequately separated from apartment bedrooms and could be constructed of materials that will ensure acoustic privacy is maintained.</p>															
Noise and Pollution	<p>Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.</p>	<p>Consistent</p> <p>The design of the proposed development</p>															

		satisfactorily addresses and mitigates the potential impact of external noise and pollution.								
Configuration										
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Consistent The development will provide 4 new 1 bedroom apartments, 10 new 2 bedroom apartments and 3 new 3 bedroom apartments which will contribute to catering for the market demand within the Balgowlah Town Centre and surrounds.								
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Consistent The use of a a mix of contemporary materials and finishes and effective building articulation will ensure appropriate visual interest is provided along Woodland Street (North) and Sydney Road whilst respecting the character of the local area.								
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Test whether the roof space can be maximised for residential accomodation and open space.	Consistent The proposed roof design is consistent with recent and modern buildings located within the street and locality. The roof elements are constructed of lightweight materials to ensure the development does not become visually dominant by way of its bulk or scale.								
Landscape Design	Was a landscape plan submitted and does it respond well to the exisitng site conditions and context.	Consistent The proposal includes areas of landscaping which responds well to the existing site conditions and context.								
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:	Consistent Areas of planting that are located on structures provides adequate size planting, soil depth and area to support the growth								
	<table><tr><td>Plant type</td><td>Definition</td><td>Soil Volume</td><td>Soil Depth</td><td>Soil Area</td></tr><tr><td></td><td></td><td></td><td></td><td></td></tr></table>		Plant type	Definition	Soil Volume	Soil Depth	Soil Area			
Plant type	Definition	Soil Volume	Soil Depth	Soil Area						

	<table><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m³</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m³</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		of planting.
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent																												
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Ground Cover			300-450mm																													
Turf			200mm																													
Universal Design	Developments are to achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.	Consistent At least 20% of the apartments contained within the development are capable of providing adaptable living arrangements.																														
Adaptive Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	Not applicable.																														
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	Consistent The subject site is located within a local centre and on a classified road that is well serviced by public transport. The development provides ground floor street activation by way of a retail premises located on the ground floor that can be access off Woodland Street (North) and Sydney Road.																														
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.	Consistent The development provides a continuous awning along both street frontages that																														

	Signage must respond to the existing streetscape character and context.	complements and is an integral part of the building design.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Yes.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Yes, adequate provisions for water management and conservation are proposed.
Waste Management	Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.	The proposal includes a waste management plan.
Building Maintenance	Incorporates a design and material selection that ensures the longevity and sustainability of the building.	Consistent The construction and facade materials selected for the development are of an adequate durability to ensure the longevity of the building provided reasonable building maintenance occurs for the duration of the buildings life.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

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

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

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

Comment:

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

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

(3) To remove doubt:

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
- (b) the design criteria specified in subclause (1) are standards to which clause 4.15 (2) of the Act applies.

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

Comment:

Adequate regard has been given to the matters raised under subclause (2) and the application is recommended for approval subject to conditions.

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 who provided a response by letter dated 10/07/2018 objecting to the development due to potential for the development impact upon to overhead powerlines located on Woodland Street.

The applicant responded to Ausgrid's letter of objection to the proposed development by submitting additional information for Ausgrid's assessment on 27/10/2018.

The additional information was reviewed by Ausgrid who provided a response on 01/08/2018 raising no objections to the propose development stating its satisfaction with the alternative options provided by the applicant.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	12.5m	16.96m to 18.1m	35.68% to 44.8%	No (see cl 4.6 discussion)
Floor Space Ratio	FSR: 2:1 (1872.8m ²)	FSR: 2:1 (1872.8m ²)	N/A	Yes
Gross floor area in Zone B2	25% Commercial GFA, maximum 1000sqm per premises	Commercial GFA: 25% (468sqm) Max sqm per premises: 468sqm	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
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes
6.16 Gross floor area in Zone B2	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Requirement:	12.5m
Proposed:	16.96m to 18.1m
Is the planning control in question a development standard?	YES
If numerical enter a % variation to requirement	35.68% to 44.8%

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* and an assessment of the request to vary the development standard in accordance with the requirements of Clause 4.6 is provided below:

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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.*

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

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

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

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 Applicant's written request has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. The applicants written request submits that the development maintains compliance with the floor space ratio development standard contained within the Manly LEP 2013, the development will cause no unreasonable overshadowing impacts, is unlikely to result in the loss of any significant views and is not excessive in terms of bulk and scale and provides a positive contribution to the streetscape.

In doing so, 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 building is of a good design and will protect the amenity of the surrounding built environment therefore satisfying cl 1.3(c)(g) of the EPA Act.

In this regard, the applicants written request has adequately demonstrated the 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).

cl 4.6 (4)(a)(ii) (Public Interest) assessment:

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

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

Comment:

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

Objectives of development standard

The underlying objectives of cl 4.3 Height of Buildings development standard are:

(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 proposed development is located within a local centre where buildings are of varying heights and roof forms.

Development located within the town centre is predominantly characterised by a mix commercial and shop top housing developments varying between 3 to 5 storeys in height. To the north east of the subject site is the 'Totem Development' which is up to 8 storeys in height.

The building height, while non compliant, is consistent with the surrounding and most recently constructed development in the locality. No. 374-378 Sydney Road to the east of the subject site is a 5 storey development with a maximum building height approximately between 16.22m to 17.22m. No. 387-391 Sydney Road to the south-east of the subject site has a maximum building height of approximately 15.33m and No. 385 also to the south-east of the subject site has a maximum building height of approximately 15.15m.

The proposed building height, 16.96m to 18.1m, is therefore considered to be consistent with surrounding and nearby development in the locality. It is also noted that the upper most floor of the development is setback a minimum 6 metres from the Sydney Road and Woodland Street (North) frontages of the site which reduces visual impact of the development from the public domain.

In this regard, in view of the location of the subject site, its 'important corner' identification within the Manly DCP 2013 and consistency with the prevailing building height and desired future streetscape character of the locality the proposed building height and roof form is considered reasonable in this instance.

The development satisfies this objective.

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

Comment:

The overall building bulk and scale has been effectively controlled by way of effective building setbacks, building separation, a high level of building articulation and manipulation of building elements and through the use of appropriate materials and finishes. The proposed building height will not result in unreasonable building bulk or scale and does not result in any unreasonable physical or visual impacts on surrounding lands. The proposal is also compliant with the floor space ratio control.

The development satisfies this 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 proposed building height allows for reasonable views to be maintained to nearby residential development from public spaces, from nearby residential development to public spaces and views between public spaces.

The development satisfies 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:

The proposed building height does not result in or contribute to any unreasonable loss of solar access to public or private open spaces. The shadow diagrams submitted with the application (refer to Drawing No.DA600 prepared by PBD Architects dated 14/12/2017) indicate that the proposed development will allow for adequate sunlight access to be maintained to private open spaces and habitable rooms of adjacent dwellings within the context of the dense urban environment in which the subject site is located.

(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 subject site is not located within a recreation or environmental protection zone.

Conclusion:

The proposed development satisfies the underlying objectives of the Height of Buildings development standard.

Zone objectives

The underlying objectives of the B2 Local Centre zone

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

Comment:

The development provides a ground floor retail premises that will provide the opportunity to serve the needs of people who live in, work in and visit the local area.

- *To encourage employment opportunities in accessible locations.*

Comment:

The development is located on a classified road (Sydney Road) that is well serviced by public transport. Further, adequate car parking is provided on site to serve the retail premises component of the development.

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

Comment:

The development is located on a classified road (Sydney Road) that is well serviced by public transport. Adequate facilities for bicycle parking have been provided on site. The location of the site within the local centre allows the site to be easily accessed by pedestrians walking to and from the local centre.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

Comment:

Appropriate conditions of consent relating to deliveries and hours of operation to protect the amenity of the people who live in the local centre have been included in the recommendation of this report.

Conclusion:

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

cl 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls	Requirement	Proposed	% Variation*	Complies
4.2.3 Setback controls in LEP Zones B1 and B2	All buildings are to be constructed to the public road and side boundaries of the allotment	The building is built to the boundaries of the allotment.	N/A	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor (Schedule 3 parking and access)	1 resident parking space for each dwelling (irrespective of number of bedrooms), and 0.16 visitor parking space for each dwelling. = 17 dwellings = 17 spaces 17 dwellings = 3 visitor spaces Total = 20 spaces	17 spaces 3 Visitor spaces	N/A	Yes
	1 parking space for every 40sqm of gross floor area = 404sqm = 11 spaces	11 spaces	N/A	Yes

***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
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.3.1 Landscaping Design	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	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
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	Yes	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	Yes	Yes
4.2.6 Balgowlah Local Centre	Yes	Yes
4.2.6.1 Wall Height on the Street Frontage	No	Yes
4.2.6.2 Exceptions to LEP Building Height	Yes	Yes
4.2.6.3 Setbacks	N/A	N/A
4.2.6.4 Design Excellence in the Design of Street Facades and Onsite Carparking	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
Schedule 2 - Townscape Principles	Yes	Yes

Detailed Assessment

4.2.6.1 Wall Height on the Street Frontage

The control states the following:

a) Within the LEP building height development standard, this DCP limits the wall height at the street frontage to 10.5m which is determined to be the established maximum height of street facades for the Local Centre particularly along Sydney Road and is significant in preserving local characteristics of the townscape.

The proposed development has a maximum wall height on the street frontage of 14.6 metres. Notwithstanding the non compliance the characteristics of the Balgowlah Town Centre are still preserved by virtue of the overall design of the building which is considered to be high quality and well articulated on each street frontage to provide appropriate visual interest and relief when viewed from the public domain. For these reasons the proposed wall height at the street frontage is supported.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

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

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

Comments:

In this case, the proposed development is likely to increase the demand for public amenities and public services within the area. Accordingly, suitable conditions have been included within the recommendation requiring payment of a section 94 contribution of \$340,000.00 in line with Manly Section 94 Contributions Plan.

Balgowlah Shopping Centre Urban Design Controls 1999

These urban design controls apply to the subject site and the block bounded by Sydney Road, Condamine Street, Woodland Street and Griffiths Street. It is acknowledged that these guidelines were created predominantly to address the development of the 'Totem' site there are aspects that reference the subject site.

These include:

2.1 Aims

Development in this area must:

- i) Attain a high standard of architectural design for maximum community benefit.*
- ii) Develop and re-define a linked and coherent set of public spaces through and around the development block.*
- iii) Create active street level use along the built frontage to Sydney Road and Condamine Street.*
- iv) Improve the pedestrian amenity and service efficiency of Lane 34.*

2.2 Objectives

i) Any future development of the site must take into consideration the Balgowlah Futures Project, which stated the following objectives:

- *make efficient use of air space adjacent to public transport routes for residential and business uses*
- *investigate opportunities to combine workplace (shop/office/studio/ workshop) with residence*
- *enhance the urban frontage to Sydney Road*
- *improve pedestrian access to Totem Shopping Centre*
- *incorporate basement carparking for commercial and residential development given the natural*

- *slope of the land away from Sydney Road*
- *take advantage of north facing aspect for upper level residential development.*

4.4.3 Woodland Street

i) New development must not be repetitive in form. Development should exhibit a scale and character complimenting the surrounding residential character.

Comment:

As detailed throughout this report, the proposed development satisfies the aims, objectives and site specific requirements outlined above. For these reasons the proposed development is considered to be consistent with the Balgowlah Shopping Centre Urban Design Controls 1999.

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

The application attracted 17 submissions as part of the public exhibition process. The submissions raised the following issues:

- **Building height, character of the area and bulk and scale**
- **Wall height**
- **Privacy**
- **Precedent**

All issues have been addressed within this report (refer to the 'Notifications and Submissions Received' section) and were found not to warrant refusal of the application.

The application was referred internally to Council referral bodies and externally to Ausgrid and NSW Roads and Maritime Service who have raised no objections to the application. All recommendations and matters for consideration pertaining to the Development Application raised by external and internal referral bodies have been included in the recommendation of this report.

The development has been found to not comply with the numerical Height of Buildings Development Standard contained in the Manly LEP 2013.

Notwithstanding, the non compliance with the development standard, the development has been found to satisfy the requirements of cl 4.6 Exceptions to development standards and to satisfy the underlying objectives of cl 4.3 Height of Buildings development standard and the B2 Local Centre zone under the Manly LEP 2013.

The development, as conditioned, has been found to be consistent with the relevant controls contained within the MDCP 2013.

Accordingly, it is recommended that the Development Application should be approved by the Local Planning Panel for the reasons detailed within this report and subject to the conditions included in the recommendation of this report.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/0890 for Demolition Works and construction of a shop-top housing development on land at Lot 2 DP 151519, 404 Sydney Road, BALGOWLAH, Lot 1 DP 151519, 404 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
DA002 Site Plan / Site Analysis Plan - Issue A	9 May 2018	PBD Architects
DA003 Demolition Plan / Excavation & Fill Plan - Issue A	9 May 2018	PBD Architects
DA101 Basement 03 - Issue A	30 April 2018	PBD Architects
DA102 Basement 02 - Issue A	30 April 2018	PBD Architects
DA103 Basement 01 - Issue A	30 April 2018	PBD Architects
DA104 Ground Floor Plan - Issue A	30 April 2018	PBD Architects
DA105 Level 1 Plan - Issue A	30 April 2018	PBD Architects
DA106 Level 2 Plan - Issue A	30 April 2018	PBD Architects
DA107 Level 3 Plan - Issue A	30 April 2018	PBD Architects
DA108 Level 4 Plan - Issue A	30 April 2018	PBD Architects
DA109 Roof Plan - Issue A	30 April 2018	PBD Architects
DA201 West Elevation - Issue A	30 April 2018	PBD Architects
DA202 North and South Elevations - Issue A	30 April 2018	PBD Architects
DA203 East Elevation - Issue A	30 April 2018	PBD Architects
DA301 Section A - Issue A	30 April 2018	PBD Architects
DA302 Section B - Issue A	30 April 2018	PBD Architects
DA400 Material Schedule - Issue A	30 April 2018	PBD Architects
DA802 Driveway Sketch Analysis - Issue B	24 September 2018	PBD Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
SWDA 1.2 Stormwater Drainage Services Roof and Ground Floor Plan - Revision P2	18 May 2018	Partridge Hydraulic Services

SWDA 1.3 Stormwater Drainage Services Basement 1/2 and Basement 3 Floor Plan - Revision P2	18 May 2018	Partridge Hydraulic Services
SWDA 1.4 Stormwater Drainage Services Details Sheet No. 1 - Revision P2	18 May 2018	Partridge Hydraulic Services
SWDA 1.5 Stormwater Drainage Services Details Sheet No. 2 - Revision P2	18 May 2018	Partridge Hydraulic Services
SWDA 1.6 Stormwater Drainage Erosion and Sediment Control Plan and Details - Revision P1	18 May 2018	Partridge Hydraulic Services

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Operational Waste Management Plan Revision G	21 May 2018	Elephants Foot Recycling Solutions
Traffic Impact Assessment Proposed Mixed Use Development 404 Sydney Road Balgowlah - Revision v06	21 May 2018	Traffix
Stage 1 Preliminary (Environmental) Site Investigation (PSI) Proposed Development 404 Sydney Road Balgowlah NSW 2093	23 May 2018	EBG Environmental Geoscience
Report on Geotechnical Site Investigation for Proposed Development at 404 Sydney Road Balgowlah	21 May 2018	Crozier Geotechnical Consultants
Building Code of Australia - Amendment 1	15 May 2018	Building Code Assistance
Acoustic Assessment for Development Application	11 May 2018	Renzin Tonin and Associates
Accessibility Report for DA Submission	16 May 2018	Building Control Group

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

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan 1 - Revision C	18 May 2018	Conzept Landscape Architects
Landscape Plan 2- Revision C	18 May 2018	Conzept Landscape Architects
Specification and Detail - Revision A	2 May 2018	Conzept Landscape Architects

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	01/08/2018
NSW Roads and Maritime Service	Response RMS Referral	20/06/2018

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other Department, Authority or Body's. (DACPLB02)

3. **Telecommunications in New Developments**

Prior to the issue of the Construction Certificate in connection with the development, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifying Authority that arrangements have been made for:

(i) the installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose.

and

(ii) the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.

Reason: To ensure that telecommunications infrastructure is considered early in the planning process.

4. **Prescribed Conditions**

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

- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.

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

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

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative Requirement (DACPLB09)

5. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,

- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

The person responsible for the development site is to erect or install on or around the

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

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

6. **Basement Storage Configuration**

All storage locations shall be constructed in the location nominated on the approved plans. Cages or similar shall be implemented. At no time will these spaces be permitted as car spaces.

Reason: To deter additional vehicles being utilised by the development and ensuring consistency with the potential traffic generation as identified in the Traffic Impact Assessment (TIA) (DACTRBOC1)

FEES / CHARGES / CONTRIBUTIONS

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.

8. **Construction, Excavation and Associated Works Bond (Crossing / Kerb)**

A Bond of \$20000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter and any footpath works required as part of this consent.

Reason: Protection of Council's Infrastructure

9. **Development Contribution - Residential**

A contribution is to be paid for the provision of or increase the demand for public amenities and public services as a consequence of the development in the area. The total contribution for this development of 17 new dwellings is \$340,000.00, being \$20,000.00 per additional dwelling. This contribution shall be paid to Council prior to the release of the Construction Certificate.

Reason: To enable the provision of public amenities and services required/anticipated as a consequence of increased demand resulting from the development.

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

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 Partridge Hydraulic Services, Job No 2018H0059, drawing number SWDA dated 18/05/2018. 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. **Submission Roads Act Application for Civil Works in the Public Road**

An Application for Infrastructure Works on Council Roadway, including engineering plans is to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of the retaining walls through the nature strip, stair, driveway crossing and footpath which are to be generally in accordance with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and/ or Council's Minor Works Policy. The plan shall be

prepared by a qualified structural engineer.

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

Reason: To provide public and private safety.

12. **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

13. **Utilities Services**

Prior to the issue of the Construction Certificate, evidence is to be submitted to the Principal Certifying Authority that

- (a) A letter from the utility provider confirming that satisfactory arrangements have been made for the approved development have been made;
- (b) Evidence that notification has been received from a utility provider, requirements for the development can be provided; and
- (c) A letter from the Australian Post confirming that satisfactory arrangements have been made the relocation of the post box.

Reason: To ensure that service have been provided as required by this Consent

14. **Shoring of Adjoining Property**

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

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

15. **Compliance with Standards**

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

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

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

16. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

17. **Sydney Water Tap in**

The approved plans must be submitted to the Sydney Water Tap in™ online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

Sydney Water's Tap in™ online service is available at:

<https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in>

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

18. **Construction Management Plan**

A Construction Management Plan shall be submitted to the Certifying Authority prior to the issue of a Construction Certificate. The plan shall detail:

- (a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion, noise and dust in the area, with no access across public parks or reserves being allowed;
- (b) The proposed phases of construction works on the site, and the expected duration of each construction phase;
- (c) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- (d) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process.
- (e) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- (f) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- (g) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
- (h) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an

appropriately qualified and practising Structural Engineer, or equivalent;

(i) Proposed protection for Council and adjoining properties;

(j) The location and operation of any on site crane; and

(k) The proposed methods of reducing dust and noise during construction.

(l) The CMP must include the anticipated truck size and movements numbers to and from the site during demolition, excavation and construction stages, truck access routes to and from the site, work zone and/or parking restriction adjustments during construction, site worker parking arrangements and traffic control plans anticipated to facilitate construction works.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community.

19. **Dilapidation report**

A photographic survey of adjoining properties (being No. 162A, 162B Woodland Street (North) and No. 402 Sydney Road) 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.

On completion of the excavation and building works and prior to occupation of the building, a certificate prepared by the appropriately qualified person to the effect that no damage has resulted to adjoining premises, is to be provided to the Principal Certifying Authority.

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

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent. In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant must demonstrate, in writing, to the satisfaction of 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: Proper management of records

20. **Privacy**

The windows serving the living/dining rooms of Unit No.s 104 and 204, as shown on the approved plans, are to be finished in obscured glazing.

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

Reason: To maintain privacy.

21. **Waste and Recycling Requirements**

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, 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 Northern Beaches Waste Management Guideline, 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

22. **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.

23. **Tree protection**

Retain and protect the existing street tree on Council's Road Reserve during construction, within Sydney Road.

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

(4LD08)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

24. **Footpath Construction**

The applicant shall install a full width footpath on both Woodland Street and Sydney Road along the property frontage up to the proposed new loading bay driveway on Woodland Street.

The works shall be in accordance with the following:

- (a) All footpath works are to be constructed in accordance with Council's Manly Paving Design Guidelines
- (b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Council's specification for footpath.

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

Reason: To ensure compliance of footpath works with Council's specification for engineering works.

25. **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.

26. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety

27. **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.

28. **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

29. **Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan .

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided. (DACWTE01)

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

30. **Authorisation of Legal Documentation Required for Onsite Detention**

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

Reason: To create encumbrances on the land.

31. **Registration of Encumbrances for On-site Stormwater Detention**

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

Reason: To identify encumbrances on land.

32. **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)

33. **Positive Covenant and Restriction as to User for On-site Stormwater Detention**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the 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 the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

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

Reason: To ensure the on-site detention and/or pump system is maintained to an appropriate operational standard

34. **Landscape Competition**

A qualified Landscape Consultant is to submit a Certificate of Practical Completion to the Certifying Authority prior to the issue of the Occupation Certificate, stating the work has been carried out in accordance with the plans, details and specifications for the landscape works contained within Landscape Plan 1, Landscape Plan 2, and the Specification & Detail Plan, drawing numbers LPDA 18-293, page 1, 2 and 3, as submitted by Conzept Landscape Architects, and dated May 2018.

Reason: This is to ensure the landscaping is planted in accordance with the drawing and maintained appropriately

(5LD01)

35. **Garbage and Recycling Facilities**

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

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

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

36. **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 the NSW Fire Brigade.

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

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

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000. (DACPLF07)

37. **Loading Dock Management Plan.**

A Loading Dock Management Plan shall be prepared by the applicant and submitted to and approved by the consent authority prior to the issue of any Occupation Certificate. The Plan will need to demonstrate how loading dock will be managed to ensure that there will be only one vehicle entering and exiting the loading dock access in any period and how safe servicing arrangements including waste collection will be undertaken without interrupting general traffic. Vehicle queuing on public road(s) is not permitted. The plan must also stipulate that tenants moving in or leaving will only be able to engage removalist vehicles up to 6.4m SRV.

Reason: To ensure the loading dock is utilised appropriately and effectively for the serving of the development (DACTRFPOC1)

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

The proposal shall be constructed in accordance with Northern Beaches Waste Management Guidelines

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)

39. **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)

40. **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)

41. **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

42. **Bin holding area**

The applicant is to ensure by laws / on going management of the building are provided so the bins stored in the temporary bin holding area must only be placed there the night before collection and returned to the bin room following collection.

The bins stored in the holding area for collection must be grouped by commodity for service.

Reason: To ensure the maintenance of the streetscape. (DACHEGOG1)

43. **Landscape Maintenance**

Landscaping is to be maintained in accordance with the plans, details and specifications for the landscape works contained within Landscape Plan 1, Landscape Plan 2, and the Specification & Detail Plan, as prepared by Conzept Landscape Architects, and dated May 2018.

Reason: This is to ensure that landscaping is maintained appropriately.

(6LP03)

44. **Allocation of Spaces**

Car parking spaces provided shall be provided, made accessible and maintained at all times. The spaces shall be allocated as follows:

17 - Residential
3 - Residential - Visitors
11- Retail

Car-parking provided shall be used solely in conjunction with the uses contained within the development. Each car parking space allocated to a particular unit / tenancy shall be line marked and numbered or signposted to indicate the unit / tenancy to which it is allocated.

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

Reason: To ensure that adequate parking facilities to service the development are provided on site. (DACPLG01)

45. **Hours of Operation**

The hours of operation of the ground floor retail premises are to be restricted to:

- o Monday to Sunday – 7am to 7pm.

Upon expiration of the permitted hours, all service (and entertainment if provided) 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. (DACPLG08)

46. **Commercial Waste Collection (DACPLG18)**

Waste and recyclable material, generated by this premises, must not be collected between the hours of 9pm and 7am on any day.

Reason: To protect the acoustic amenity of surrounding properties.(DACPLG18)

47. **Commercial Waste and Recycling Storage**

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

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed. (DACPLG19)

48. **Deliveries**

No deliveries, loading or unloading associated with the premises are to take place between the hours of 7pm and 7am on any day.

Reason: To protect ensure the acoustic amenity of surrounding properties. (DACPLG21)

49. **Commercial Waste and Recycling Storage**

Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed. (DACPLG25)

PAINT COLOUR SCHEDULE

METAL PLATING
 METAL FINISHING (TO FUTURE SELECTION)
 DIFF. FORMS CONCENTRATED
 BI-FOLDING SCREEN
 WATER PRESSURES

MATERIAL LEGEND

APG	ALUMINUM FRAMED GLAZING
AF	ALUMINUM ELLIPTICAL FIXED LOADERS
BS	BATTEN SCREEN (TO FUTURE DETAIL)
CE	CLASS BALUSTRADE (TO CANAL STRAILAN STANDARD)

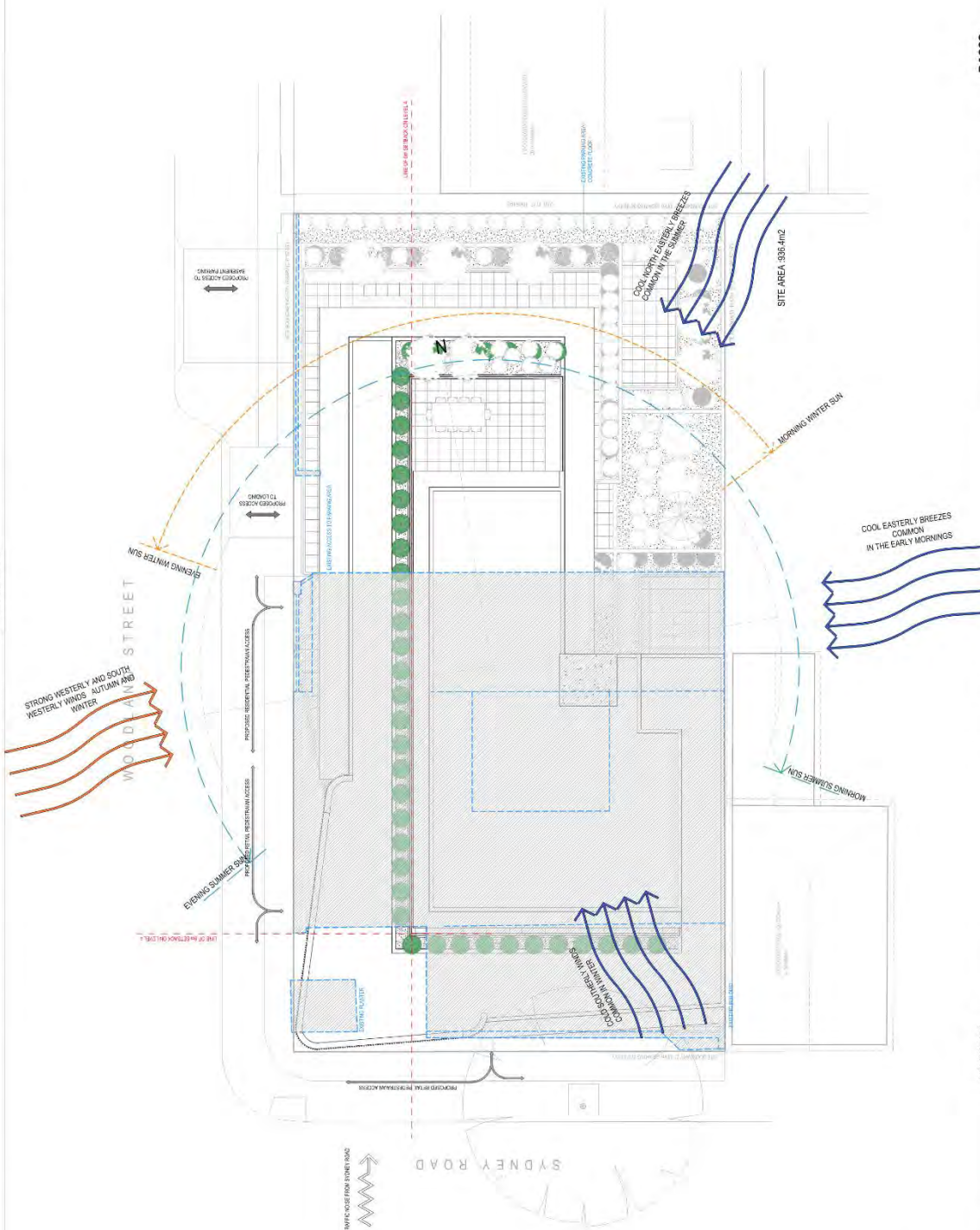
PB	PLANTBOX
RC	240L CO MINOLED RECYCLING BIN
WA	240L PAPER RECYCLING BIN
SK	SIM LIGHT
ST	STORAGE

FIRE STAIRS
ROOF ACCESS HATCH
HIGH LIGHT WINDOW
KITCHEN EXHAUST
MECHANICAL RISER TO FLOORS

LEGEND

BUILDING STANDARDS
PROCEEDING DO NOT SCALE FROM DRAWINGS
PLANNING LAYOUTS

GENERAL NOTES



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Site Plan
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DA002

PBD | ARCHITECTS

SITE PLAN / SITE ANALYSIS
PLAN

AMENDMENTS

PROJECT: PROPOSED MIXED USE DEVELOPMENT

104 SYDNEY ROAD, E
OP 15:15 TO 2:00 15:16

CLIENT: HPG BALGOMLAH PROJECT PTY LTD



West Elevation
1 : 100 @ A1

AMENDMENTS				DA201	
PROJECT:				WEST ELEVATION	
PROPOSED MIXED USE DEVELOPMENT					
401 STONEY ROAD, BALGOWLAH					
SP 859/94 L107 (1518)					
CLIENT: MPO BALGOWLAH PROJECT PTY. LTD					
DESCRIPTION	DATE	ISSUE	DESCRIPTION	DATE	ISSUE
1. INITIAL DESIGN					
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ISSUE 4
JOB No. 1802

PBD | ARCHITECTS

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AMENDMENTS		DA202	
PROJECT		NORTH & SOUTH ELEVATIONS	
PROPOSED MIXED USE DEVELOPMENT 401 SYDNEY ROAD, BALGOONLAH DPI REGION L207-11116		PBD ARCHITECTS	
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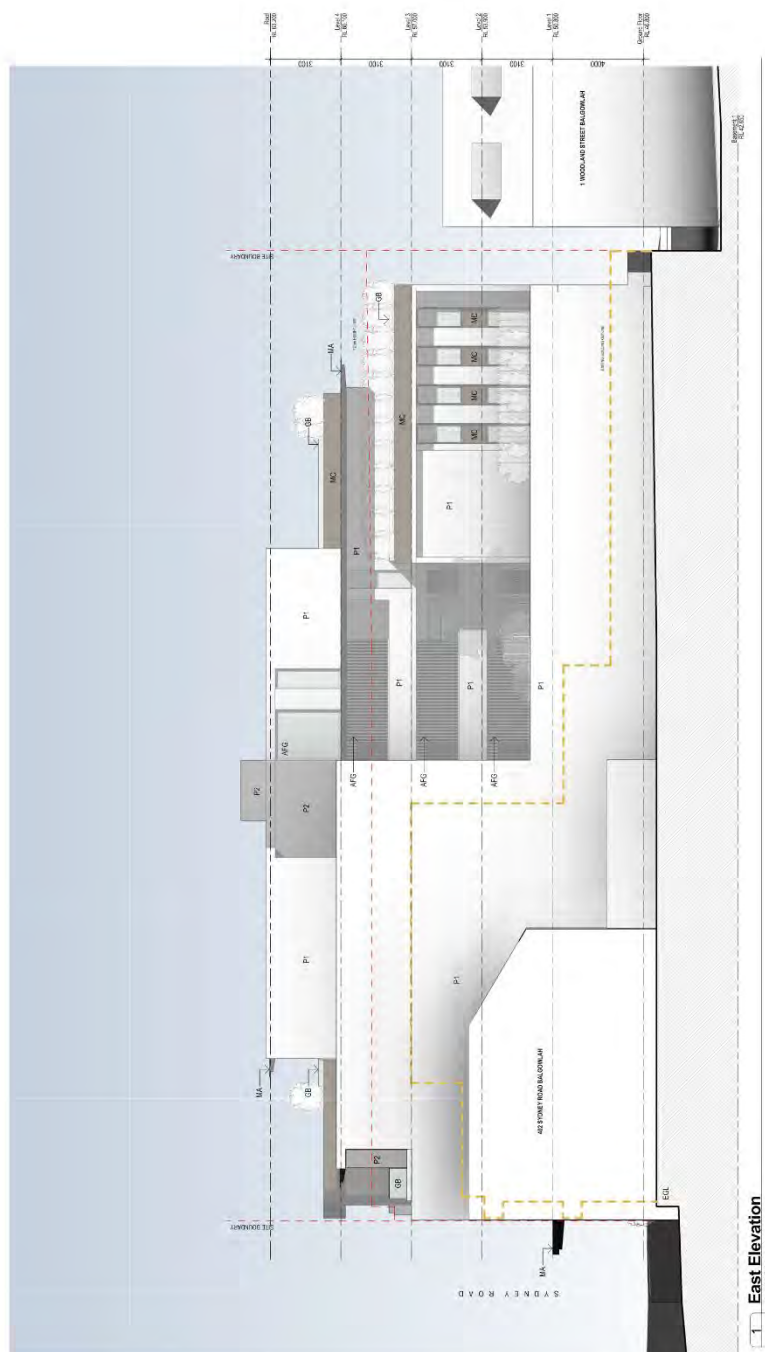
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1 East Elevation

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EAST ELEVATION

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Level 2, 52 Abbot Street, Sunny Hills NSW 2133
 (02) 9558 8147; info@jhsarchitects.com.au; www.jhsarchitects.com.au

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planning consultants

28 May 2018
Our Ref: 20206B Clause 4.6 Variation

The General Manager
Northern Beaches Council
PO Box 82
MANLY NSW 1655

Dear Sir

**RE: WRITTEN REQUEST FOR EXCEPTION TO A DEVELOPMENT STANDARD
CLAUSE 4.3 HEIGHT OF BUILDINGS DEVELOPMENT STANDARD FOR
PROPOSED MIXED-USE DEVELOPMENT AT 404 SYDNEY ROAD, BALGOWLAH**

1.0 Introduction

DFP has been commissioned by C. Peterson and HPG Balgowlah Project Pty Ltd to prepare a request pursuant to clause 4.6 of *Manly Local Environmental Plan (MLEP) 2013* in respect of the proposed mixed-use development at 404 Sydney Road, Balgowlah.

This request for an exception to clause 4.3 Height of Buildings development standard in the MLEP 2013 concludes that:

- The proposal is consistent with the objectives of the height of building development standard, the objectives of the B2 Local Centre zone and the provisions of the MLEP 2013 and the Manly Development Control Plan (MDCP) 2013 relating to building form and scale;
- The proposed mixed-use development provides a total Gross Floor Area of 1,872m². This equates to a Floor Space Ratio (FSR) of 2.0:1, which complies with the MLEP 2013 2.0:1 maximum FSR requirement.
- The solar access/shadow diagrams prepared by PBD Architects demonstrates that the proposed development will have minimal overshadowing of neighbouring properties and for small periods between 9am and 3pm in mid-winter and even less during summer, spring and autumn months. The majority of the shadows cast by the proposal will extend across Sydney Road and Woodland Street.
- The proposed mixed use development will not have a significant adverse affect on district or water views over the Site from surrounding properties or the public domain. The proposal is likely to provide pleasant distant views for the proposed residential units on upper floors with a well-articulated façade creating a high level of amenity with landscaped planter areas, private open spaces and further setbacks towards the northern boundary. Level 4 of the proposal is positioned with deep 6 metre setbacks to both the Sydney Road (southern) and Woodland Street (northern) site boundaries and from the main building edges below to have minimal visual bulk and perceived height from street

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level perspectives similar to the 5 storey mixed use building at 374-378 Sydney Road, Balgowlah.

- The proposed mixed-use development is a contextual response to the site as a 'Gateway high quality "signature" mixed use building at the western entry to the Balgowlah Local Centre activating the streetscape for the arrival experience into the town centre. The strong articulation of the modern, attractive façade identifies the importance of the south western corner of the site, creating a focal point for the commencement of the commercial street frontages to Sydney Road. The architectural built form aligns with the commercial street frontage on Sydney Road then gently sweeps around to Woodland Street effectively defining the commencement of the Balgowlah Local Centre, whilst cascading setbacks to the northern boundary consider the lower building form and scale of the neighbouring residential context and maximises sunlight and amenity.
- The MDCP 2013 clearly identifies the Site as an "Important Corner". The proposed mixed use development contextually responds to this visually prominent "Gateway" marker site, articulating the built form to accent the south-western corner but with Level 4 well setback from the main building below and with detailed consideration of the applied materialisation for the key objective to achieve architectural design excellence.

2.0 Manly Local Environmental Plan 2013

2.1 Subclause 4.6(1) – Flexibility and Better Outcomes

Subclause 4.6(1) of the LEP states the objectives of the clause 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."*

Our response to these provisions is contained within this submission.

2.2 Subclause 4.6(2) – Consent may be granted

Subclause 4.6(2) provides that:

- (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.*

The height of building development standard is not expressly excluded from the operation of clause 4.6 and accordingly, consent may be granted.

2.3 Subclause 4.6(3) – Written Request

Subclause 4.6(3) relates to the making of a written request to justify an exception to a development standard and states:

- "(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*

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

The proposed development does not comply with the 12.5 metre maximum height of building development standard pursuant to clause 4.3 of Manly LEP 2013 however, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as justified in this written request.

2.4 Subclause 4.6(4) – Written Request

Subclause 4.6(4) provides that 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."*

Furthermore, subclause 4.6(5) provides 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 Secretary before granting concurrence."*

The remainder of this written request for exception to the 12.5m maximum building height development standard addresses the matters required under subclauses 4.6(4) and 4.6(5) of the LEP.

2.5 The Nature of the Variation

Clause 4.3 of Manly LEP 2013 sets out the building height development standard as follows:

- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

Sheet 4 of the Height of Buildings Map indicates that the relevant maximum building height limit for the Site is 12.5m.

The LEP defines building height as follows:

"building height (or height of building) means:

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.]"



Furthermore, the proposed mixed use development is setback 1.5 metres on the northern boundary with a 3 storey façade, an additional setback of 6 metres for the 4 storey (Level 3) and a further setback of 14 metres for the final 5 storey portion. Level 4 is also well setback to both the Sydney Road (7.1 metre setback) and Woodland Street (6.9 metre setback) frontages to further reduce the bulk and height of the proposed building as viewed from the public domain. The lift over-run at RL 64.50 is well setback from both street frontages. Therefore, part of the building complies with the 12.5 metre maximum height limit under the Manly LEP 2013, however, at the highest point, the roof of the building exceeds the LEP height limit by 4.46 metres and the lift non-compliance is 5.6 metres.

2.6 The Objectives of the Development Standard

Clause 4.3(1) of the MLEP 2013 states the objectives of the height of buildings development standard 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.*

2.7 The Objectives of the Zone

Clause 2.3 of the MLEP 2013 states the objectives of the B2 Local Centre Zone are as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

2.8 The Grounds of the Objection

The proposed variation to the 12.5m maximum building height development standard has been considered in light of the abovementioned objectives and potential environmental impacts and strict compliance is considered to be unreasonable and unnecessary for the following reasons:

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1. The proposal is consistent with the objectives of the height of building development standard, the objectives of the B2 Local Centre zone and the provisions of the MLEP 2013 and the Manly Development Control Plan (MDCP) 2013 relating to building form:

Table 1: Review against relevant Objectives

Objective	Comment
Clause 4.3 Height of Buildings	
(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,	<p>Sydney Road is set along a ridgeline in the Balgowlah locality and within the shopping centre development comprises commercial and residential buildings of two to nine storeys. In addition, the Site is located on the corner of Sydney Road and Woodland Street, marking the Gateway entry to the Balgowlah Local Shopping Centre. The importance of this Site as a Gateway is formalised in the MDCP 2013, Schedule 2 – Map B – Balgowlah Local Centre, which delineates the Site as an “Important Corner”.</p> <p>The proposed mixed-use building, which is three to five storeys in height, is consistent with the varying existing building heights in the Balgowlah Local Centre including the mixed use building at 374-378 Sydney Road which is approximately 50 metres to the east of the site. Furthermore, the highest point of the building is near the corner of Sydney Road and Woodland Street, thereby responding to the topography, and the desired future character articulated in the DCP in marking the “Important Corner”. The proposed building has been designed to strongly delineate the corner position and signal the change in urban form from low scale residential dwellings to the Balgowlah Local Centre. Level 4 of the proposed building has been setback more than 6 metres from the main building form below to both the Sydney Road (7.1m setback) and Woodland Street (6.9m setback) frontages as recommended by Council’s Planners and Urban Designer at the Pre-Lodgement Meeting (see Appendix 1).</p>
(b) to control the bulk and scale of buildings,	<p>The building has been carefully designed to transition in bulk and scale as it adjoins the northern and eastern adjacent buildings. The building steps down to the north along Woodland Street to a three storey section, which is suitable to the adjacent two storeys plus attic townhouse development within the adjacent residential zone. To the east, the proposal abuts a two storey with parapet commercial building which is likely to be redeveloped in the future envisaged by the planning controls of the Manly LEP 2013 and Manly DCP.</p> <p>As viewed from Sydney Road, the proposal transitions through setting back the fifth level from the eastern boundary and front boundary and articulating the façade to emphasise the ground floor retail and two shop-top housing levels above, then the building setbacks above that. It is considered that this is a well resolved design solution rendering the mixed-use building appropriate in bulk and scale to the streetscape.</p>
<p>(c) to minimise disruption to the following:</p> <p>(i) views to nearby residential development from public spaces (including the harbour and foreshores),</p> <p>(ii) views from nearby residential development to public spaces (including the harbour and foreshores),</p> <p>(iii) views between public spaces (including the harbour and foreshores),</p>	<p>Due to the Site's location in an established commercial area on a ridgeline, views to and from surrounding properties and public spaces are limited. It is considered that the proposal is not likely to have unreasonable impacts on any views over the Site.</p>



Table 1 - Review against relevant Objectives

<i>(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.</i>	The solar access study/shadow diagrams prepared by PBD Architects demonstrate that the proposed building will not result in any significant overshadowing of neighbouring residential properties (see Appendix 3).
<i>(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</i>	N/A
Clause 2.3 Zone Objectives – B2 Local Centre Zone	
<i>To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.</i>	The proposed mixed-use development is consistent with this objective as it provides both retail uses and residential uses that will serve the people who live in the locality and provide housing for additional residents on an established road and bus transport route.
<i>To encourage employment opportunities in accessible locations.</i>	The proposed development is located on a well-serviced bus route and will provide employment opportunities in the short term during the construction stage and in the long term with the ground floor retail space.
<i>To maximise public transport patronage and encourage walking and cycling.</i>	The mixed-use retail/residential development will provide accommodation and retail space on a well serviced bus route. Sydney Road has 12 different bus services linking residents and workers to the City, Chatswood Warringah Mall, Seaforth and Manly. Walking from the Site to access other services within the Balgowlah Local Centre will be maximised by the development, including recreational walks in the vicinity, such as the North Harbour Walk which is within approximately 750m of the Site. Cycling is encouraged in the proposed development by the provision of bike racks within the basement parking areas.
<i>To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.</i>	The proposed development is not likely to give rise to unreasonable amenity effects in relation to noise, odour or deliveries. The proposal includes a loading dock and ramp to the basement parking areas however, the amenity impact is likely to be minor as it abuts the blank wall of the adjacent townhouse development.

2. The proposed development satisfies the 2.0:1 maximum Floor Space Ratio development standard under clause 4.4 of MLEP 2013;

The proposed mixed-use development provides a total Gross Floor Area of 1,872m². This equates to a Floor Space Ratio (FSR) of 2.0:1, which complies with the MLEP 2013 maximum FSR requirement.

3. The proposal will cause no significant adverse overshadowing impacts on surrounding properties as demonstrated by the solar access study and shadow diagrams prepared by PBD Architects (see **Appendix 3**);

Most of the shadows cast by the proposed building will extend across Sydney Road and Woodland Street between 9am to 3pm in mid-winter.

4. The proposal is unlikely to result in the loss of any significant views;

The proposed three to five storey mixed use development is unlikely to affect significant views over the Site and in fact is likely to provide pleasant distant views for the proposed apartments

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due to the detailed consideration of the built form and relationship between the interior and exterior spaces.

5. The proposal is considered to demonstrate good urban design, is not excessive in terms of bulk and scale and provides a positive contribution to the streetscape; and

The proposed mixed-use development is a highly considered contextual response to the Balgowlah locality with a detailed and well-articulated architectural language aimed to enhance and invigorate the streetscape. The commercial/retail façade on ground floor aligns with the site boundary and the other commercial shop frontages on Sydney Road, activating the public commercial streetscape. The upper residential levels setback from the site boundaries and have bi-folding screens for acoustic and privacy treatments.

The south western “Important Corner” responds architecturally with elegantly curved solid balcony walls at the prominent corner of Sydney Road and Woodland Street (North), framed with a 3 storey box clad with dark colours, vertical battens of timber appearance.

The proposal features a modern palette of high quality materials such as off-form concrete, timber-look screens and metal cladding with vibrant colours to a few balcony walls to make a signature design statement to the streetscape, as a modern mixed use apartment building.

Figure 1 below is a photomontage of the proposed building as viewed from the corner of Sydney Road and Woodland Street.



Figure 1 – Photomontage of the proposed building

The Balgowlah Local Centre includes several taller buildings including the Telstra building and the Stockland shopping centre and apartment development including a variety of heights up to 8 storeys.

As indicated above, the MDCP 2013 clearly identifies the Site as an “Important Corner” site in the Balgowlah Local Centre. The proposed mixed-use development, through appropriate design, fulfils this role.

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2.9 Director-General's Considerations

As indicated above, subclause 4.6(5) of the LEP also requires the Director-General, in deciding whether to grant concurrence, to consider the following:

- "(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,"*

The breach of the 12.5 metre maximum height of buildings standard under MLEP 2013 will not result in any matter of significance for State or regional environmental planning.

- "(b) the public benefit of maintaining the development standard,"*

The proposed mixed-use development is consistent with the strategic planning objectives of the Northern Beaches LGA and those established by the State Government. The proposal includes the provision of additional housing on a well-serviced public transport route. In addition, the retail component provides the Gateway marker site extension of the Balgowlah Shopping Centre.

- "(c) any other matters required to be taken into consideration by the Director-General before granting concurrence."*

The Department of Planning Guidelines on varying development standards recommends consideration of the provision of Clause 4.6 and the Five Part Test established in *Whebe v Pittwater Council* [2007] NSW LEC 827. The five part test includes:

- "1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3. The underlying objective of the purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- 4. The development standard has been virtually abandoned or destroyed by Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary or unreasonable; and*
- 5. The zoning of the particular land is unreasonable or inappropriate so that the 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 have been included in the particular zone."*

In the Court judgement *Four 2 Five Pty Ltd v Ashfield Council*, the Court held that in order to support a Clause 4.6 variation it was necessary to ensure that the proposed development was consistent with the zone objectives and also that the variation was in the public interest because it was consistent with the objectives of the development standard. The Court also held that consideration needs to be given to whether there are sufficient environmental planning grounds to justify contravening the development standard.

It is also noteworthy that the proposed mixed-use development is consistent with both the B2 Local Centre zone objectives and the objectives of the height of building development standard in the MLEP 2013. The proposed mixed-use development will achieve a better environmental outcome for the Site and its local context by providing a high-quality architectural design for a mixed-use development giving a signature building to this Gateway entry to the Balgowlah

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Shopping Centre. In addition, the proposed mixed-use building will provide additional residential accommodation for the LGA in a position well-served by public bus transport services, and with accessible local services.

3.0 Conclusion and Recommendations

We have assessed the proposed mixed-use development against the relevant statutory provisions of clause 4.6 of MLEP 2013 and prepared this written request which provides justification that compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of the case.

Accordingly, the justification within this written request is considered to be well founded. Should you have any queries please do not hesitate to contact the undersigned.







ITEM 3.6	DA2018/0401 - 14 WYATT AVENUE, BELROSE - CONSTRUCTION OF A BOARDING HOUSE WITH 27 ROOMS INCLUDING A MANAGERS RESIDENCE
REPORTING OFFICER	Rodney Piggott
TRIM FILE REF	2018/649161
ATTACHMENTS	1 Assessment Report 2 Plans

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2018/0401 for construction of a Boarding house with 27 rooms including a managers residence at Lot 2597 DP 752038, 14 Wyatt Avenue, Belrose subject to the conditions and for the reasons set out in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Development Application Number:	DA2018/0401
Planner:	Adam Mitchell
Property Address:	14 Wyatt Avenue, Belrose
Proposal Description:	Lot 2597 DP 752038
Recommendation:	APPROVAL
Clause 20 Variation:	Yes
Proposal in Detail:	Construction of a Boarding House with 27 rooms including a manager's residence
History and Background:	<p>There are two important and fundamental pieces of background information that are required to be considered in conjunction with this Assessment Report.</p> <p>The first pertains to the historical subdivision pattern of the land on 8 March 1974 which is referenced in the Housing Density standards of WLEP 2000.</p> <p>A copy of this subdivision pattern is shown on Figure 1 below from Council records:</p>



The red circle (added) shows that Nos. 14 and 16 Wyatt Avenue were in the same ownership at 8 March 1974. This background history becomes relevant later in the report.

The second piece of background information that should be noted in the reading of this Assessment Report is a prelodgement meeting that was held between the applicant

and Council on 30 November 2017 to discuss the proposal for the construction of a boarding house (refer PLM2017/0139).

It is not necessary for this purpose of this Assessment Report to cite the lengthy discussions within the report accompanying PLM2017/0139, but it is worth summarising several facts of the report:

- The proposal was for a part 2 / part 3 storey boarding house with 33 rooms, 9 car parking spaces and 7 motorcycle spaces. The proposal accommodated 1 common room.
- It was concurred that the State Environmental Planning Policy (Affordable Rental Housing) 2009 does not apply to the development, but, *notwithstanding the applicability of the SEPP ARH to this particular development, it is considered that the standards contained with Cl.40 of the SEPP ARH should be considered in the design of the development.*
- It was concurred that the development for the purpose of a boarding house is a Category Two development by virtue of being an innominate use, and is therefore permitted with consent in the locality.
- It was concurred with that, if any form of development is to occur on this site, the specified location is the most suitable with regard to minimising impacts on trees and the landform.
- Insufficient detail was provided regarding the materiality and proposed landscaping to make a judgement of whether the development will be enhancing and complementary to the natural landscape.
- The onus was placed on the applicant to provide legal advice regarding whether or not the development can comply with the requisite housing density standard.
- The development proposed side boundary setbacks as little as 3m. This element was not supported, and it was suggested that a minimum setback of 6m be required given the width of the site – subject to the building having sufficient articulation and it being demonstrated that the variation will have no unreasonable impact.
- A minimum of 50% landscaping is required, and a landscape plan is to accompany the application.
- The report concluded that, where possible, the applicant should attempt to undertake preliminary

consultation with neighbours prior to lodgement given the controversial nature of boarding house developments. This is not a legislative or statutory requirement – only a recommendation.

Upon lodgement of the application a preliminary review raised issues that were provided to the applicant by letter dated 10 August 2018. The applicant provided additional information and revised plans on 21 August 2018 addressing Council's concerns.

Site Description

The subject site is a single allotment located on the north-western side of Wyatt Avenue, Belrose.

The site is rectangular in shape and has a width of 28.595 metres and a depth of 80.42 metres, equating to an overall surveyed area of 2,298 square metres.

At present the site accommodates 64 trees of varying species and heights. The majority of the trees (55 trees) are located parallel to the eastern property boundary, with several trees interspersed around the allotment. A 3m+ hedge exists parallel to the street frontage. The trees parallel to the eastern boundary are scattered amongst boulders and the like, identified as a 'watercourse' in the provided survey.

The site accommodates a driveway/"track" that extends for the length of the site and connects to the rear portion of No. 16 Wyatt Avenue to the north.

Topographically the site declines by approximately 7 – 10 metres from south to north (front to rear) via a gradual slope, and no exceptional topographical features can be found on the site.

The site is bound by No. 16 Wyatt Avenue to the west and north. No. 16 Wyatt Avenue accommodates a multi-storey detached dwelling house and an in-ground swimming pool. The portion of No. 16 Wyatt Avenue that the "track" on the subject site leads to accommodates a tack shed, horse facilities and an informal helicopter landing area. No. 16 Wyatt Avenue extends a further 115 metres (approx.) to the north-west before adjoining bushland.

East of the site is 12 Wyatt Avenue which is identical in shape to the subject allotment, and is similarly vacant of structures.

South of the site and across Wyatt Avenue is six detached dwelling houses on allotments far smaller than those on the northern side of Wyatt Avenue.

Notification Required:	Yes	21 Days
Submissions Received:	Yes	Number of Submissions: 98
Cost of Works:	\$4,895,000	
Section 94A Applicable:	Yes	TOTAL: \$48,950.00

Warringah Section 94A Development Contributions Plan		
Contribution based on total development cost of	\$	\$4,895,000
Contribution - all parts Warringah	Levy Rate	Contribution Payable
Total S94A Levy	0.95%	\$46,502.50
S94A Planning and Administration	0.05%	\$2,447.50
Total	1%	\$48,950.00

SECTION 1 – CODE ASSESSMENT REPORT

ENVIRONMENTAL PLANNING INSTRUMENTS

Warringah Local Environmental Plan 2000

Locality: C8 Belrose North

Development **Boarding House:**

Definition:

(a) means any premises that:

(i) are wholly or partly let as a lodging for the purposes of providing the occupants with a principal place of residence, and

(ii) are used and occupied by at least 4 long term unrelated residents, and

(iii) include a communal living space used for eating and recreation, and

(iv) are not licensed to sell liquor, and

(b) does not include premises that have been subdivided or in which there is separate ownership of parts of the premises.

Category of Development: Category 2

Desired Future Character Statement (numbering added):

- (1) The present character of the Belrose North locality will remain unchanged except in circumstances specifically addressed as follows.
- (2) The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.
- (3) Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses.
- (4) A dense bushland buffer will be retained or established along Forest Way. Fencing is not to detract from the landscaped vista of the streetscape.
- (5) Development in the locality will not create siltation or pollution of Middle Harbour.

Is the development consistent with the Locality's Desired Future Character Statement? Yes

Category 2 Assessment against the Desired Future Character Statement

Requirement 1: *The present character of the Belrose North locality will remain unchanged except in circumstances specifically addressed as follows.*

Comment: In consideration of whether the development will 'change' the character of the C8 Belrose North locality, it is prudent to first establish what this existing character is.

In the circumstance of this particular application, character is established via two separate assessments: land use and visual appearance.

Firstly, it is warranted to undertake a detailed analysis of the pattern of land use in the C8 locality to establish if the use sought is a use that already exists within the locality, and then to establish if the use is compatible with other land uses.

In the assessment of this application, properties within the C8 locality have been reviewed, and it can be surmised that the pattern of land use exists as follows:

- 13 x dwelling houses (including 1 dual occupancy)
- 1 x 31 room boarding house
- 1 x riding school
- 1 x Optus satellite communication facility
- 1 x sandstone quarry
- 3 x plant nurseries
- 1 x plant nursery / landscape wholesaler / restaurant
- 1 x electricity substation
- 5 x schools (over various parcels of land, both developed and undeveloped)
- 1 x child care centre (plus one approved, but unbuilt childcare centre)

From this review, it is evident that the C8 Belrose North locality has an eclectic array of land uses. It should additionally be noted that more than 50% of the land within the C8 locality is presently undeveloped bushland owned by the Metropolitan Local Aboriginal Land Council.

From a review of the above tally, it can be concluded that residential land use exists as the *prevailing* typology of land use, but this land use is arguably not the *dominant* land use of the C8 locality, given the actual physical scale of the residential development commensurate to other land uses (i.e. schools).

Accordingly, it can be concluded that the proposed use of the land for the purpose of a boarding house is consistent with the prevailing residential land use, and is not dichotomous to other developments within the locality. It can also be concluded that by virtue of this compatibility, the development will be able to co-exist in harmony with the rest of the C8 locality, and will thereby 'unchange' the character of the area.

Secondly, an assessment of the actual physical development itself (it's visual appearance) commensurate to other buildings is required. It is prudent to note that the DFC control requires character compatibility over the whole of the locality itself, and not on a street-by-street basis.

Whilst the latter half of this report goes into some detail regarding the physical attributes of the proposed building and how it compares with its surrounds, it can be

evidently surmised from a visual inspection of other buildings in the locality that the proposal is of a physical bulk and scale that is consistent with the established character of buildings in the locality.

Therefore, it can be concluded that the character of the building proposed (regardless of its use) is of a bulk, scale and architectural typology that will not 'change' the character of the area.

Accordingly, it is found that the development as proposed will not change the present character of the Belrose North Locality.

Requirement 2: *The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.*

Comment: The landscape of the development site is generally characterised by a vast expanse of manicured lawn that falls from the road to the rear boundary of the site. 64 trees are present on the land, with the vast majority existing parallel to the eastern boundary. Several other trees exist along the front and rear boundaries, and few trees are free-standing within the lawned area.

From a review of the earliest available aerial imagery of the site (from 1943), it is apparent that the properties on the northern side of Wyatt Avenue had little canopy coverage and appear to generally accommodate ground-cover species and shrubbery.

It can therefore be assumed that the pattern of trees planted directly along the property boundary were introduced upon the release of the subdivision pattern of the area. Notwithstanding this history, for the purpose of this assessment all trees and topography will be considered as a part of the 'natural' landscape.

The development application subject of this Assessment Report seeks to remove 2/3 of the trees on the site, and seeks consent for substantial excavation works to accommodate part 1 /part 2 levels of the building.

It is evident from the tree removal sought and the magnitude of excavation that the natural landform will be greatly modified comparative to its existing barren-state, and it is also apparent that modification to the landform would occur if a different type of development were to be proposed upon the site (i.e. a single dwelling house). In this regard, impact to the natural environment is inevitable if the site is to be granted the ability to accommodate any form of development (of which the Environmental Planning and Assessment Act 1979 enables).

Therefore, the consideration must be formed on the basis of *enhancement*.

The development application is accompanied by a comprehensive landscape plan by Paul Scrivener, Landscape Architect. The planting schedule details that, inter alia shrubbery and ground cover, the development will contribute an additional 54 canopy trees to the site. By sheer quantum, this quantity of plantings will significantly contribute to the site being able to *blend* with the bushland to the north. This replacement of tree stock will also provide growth opportunities for the new trees to establish, as some of the existing older trees reach the end of their useful life.

On this basis, the impact on the vegetation on the site is found to be inevitable and suitably mitigated by replacement stock.

With regard to the impact on natural landform consequent of the proposed excavation, reference is made to recent Caselaw, *Boston Blyth Fleming v Hornsby Shire Council* [2018] NSWLCE 1270¹, which has circumstantial similarities to the subject application.

At 26 Commissioner Walsh notes (extract, names removed):

*I note Mr ****'s point that considerable excavation is required and that the development involves substantial modification to the landform. For me, this is an appropriate response to balance the achievement of local area compatibility while delivering a substantial project which, as he agrees, is in need.*

... This principle is concerned with preserving topography which assists in reducing the visual dominance of a building. In my view, the circumstances here are different. The proposed excavation is concerned with reducing the visual dominance of a building.

With acknowledgement of the above citing, the purpose of the excavation sought as a part of this subject application is to accommodate basement carparking and to reduce the visual dominance of a building as it progressively recesses in height as the topography slopes away.

Therefore, it is considered that if the site is to accommodate a development of this scale, the most suitable design response is to manipulate the topography of the land where necessary to reduce perceivable bulk and scale.

Accordingly, the development as proposed is found to enhance the landscape environment.

Requirement 3: Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses.

Comment:

The development is required to conform as a low intensity, low impact use as described in the Land & Environment Court of NSW judgement *Vigor Master Pty v Warringah Shire Council* [2008] NSWLEC 1128 as follows:

"Intensity - is commonly used to identify the nature of the proposal in terms of its size and scale and the extent of the activities associated with the proposal. Therefore "low intensity" would constitute a development which has a low level of activities associated with it".

"Impact - is commonly used in planning assessment to identify the likely future consequences of proposed development in terms of its surroundings and can relate to visual, noise, traffic, vegetation, streetscape privacy, solar access etc. Therefore 'low impact' would constitute a magnitude of impacts such that was minimal, minor or negligible level and unlikely to significantly change the amenity of the locality".

An assessment of the application in accordance with the above citing is required to ascertain whether the development sought can reasonably conform as a low intensity, low impact use.

¹ This Caselaw pertains to the construction of a large seniors housing development on rural land.

Low Intensity Assessment

The development is for the construction of a boarding house which provides for additional residential accommodation in the locality. The use of the land for residential purposes has already been established as the prevailing land use within the C8 locality, and the form of residential accommodation as a boarding house is an innominate Category Two development. Therefore, the intensity of the land use conforms with the prevailing pattern of development in the locality, and the level of activities associated with it will be relatively limited (i.e. eating, sleeping, vehicle movements etc.) comparative to other forms of permissible land uses.

Note: the assessment of 'low intensity' is not required under the DFC to consider the density of the development, and this is addressed in the latter half of this report.

Low Impact Assessment

The above Court citing lists a range of potential amenity impacts that could be used in the consideration of whether a development is 'low impact' and these include (but are not limited to) visual, noise, traffic, vegetation, streetscape, privacy, solar access etc. As such, it is needed to establish whether the development will have an impact, and then compare this impact with the likely impacts of other land uses in the C8 locality to ensure that the development will be unlikely to significantly change the amenity of the locality as a whole.

Accordingly, an assessment on each of the potential impacts consequent of the development follows:

1. Visual / Streetscape

The assessment of visual and streetscape impact pertains to how the building will present to the street.

The building complies with the requisite front boundary setback control and height of building control when viewed from the street. This setback area is proposed to be densely landscaped with more plantings than are currently in place on the site.

Therefore, by virtue of compliance with the relevant numerical controls, the development is found to be of an acceptable visual impact.

Other forms of development within the locality are found to be of a greater visual impact by virtue of a lesser front setback, a front setback accommodated by car parking, a wider façade addressing the street, and a lesser landscaped outcome.

Accordingly, commensurate to other existing developments in the locality, the development sought is unlikely to change the amenity of the locality.

2. Noise

The assessment of noise pertains to the likely acoustic impact of the development upon surrounding developments.

The development is for residential accommodation and occupants of the boarding house will, if approved, be subject to a comprehensive Plan of Management to manage noise.

The density of the development will inevitably result in the building accommodating persons of different professions who work at different hours throughout the day and night. This can therefore lead to the assumption that noise will be adequately managed on the site for both the amenity of occupants of the development, and for neighbouring properties.

Standard detached dwelling houses within the vicinity are not subject to any Plan of Management or noise policies, and therefore there is nothing to restrict or limit the noise that they could cause. For the purpose of this report it need not be required to list the obvious noise associated with schools, child care centres or places of retail, but it can be surmised that they would generate a higher level of noise than a boarding house.

Accordingly, the level of noise associated with the boarding house is found to be of a low impact and will not change the amenity of the locality.

3. Traffic

The assessment of the impact of traffic could pertain to many things, but for the purpose of this application the most suitable assessment is derived from one of the primary issues raised in submissions received (detailed later in this report) which is traffic congestion on the local road network, particularly during peak school hours and weekend sport hours.

Albeit the SEPP ARH does not apply to this development, there is a general expectation that occupants of boarding house developments will heavily rely on and utilise public transport, such as the adjacent bus stop.

As detailed earlier in this report, there is a realistic expectation that occupants of the boarding house will work in various professions that have different operating hours. From this, it can be considered that occupants will be coming and going from the development at all hours of the day and night, rather than all leaving at the same time. Accordingly, the vehicle trips associated with the development are unlikely to detrimentally impact the local road network.

This consideration is supported by a traffic and parking assessment submitted to buttress the application, and by an independent review done by Council's Traffic Engineers.

The level of vehicle movements associated with the site is evidently lesser than that of other land uses within the C8 locality (schools and retail). Much of the objection received for this boarding house application pertains to traffic congestion that is supposedly caused by the John Colet School and the adjacent Wyatt Reserve.

Therefore, the development for the purpose of a boarding house is found to be of a low traffic impact.

4. Vegetation

The assessment on the impact the development will have upon the vegetation on the site has been addressed earlier in this report and need not be reproduced.

The removal of vegetation proposed and the replacement stock is sufficient to warrant the works to be of a low impact.

5. Privacy

The assessment of the impact on privacy pertains to the opportunities for overlooking that are caused by the development upon adjoining properties.

In this regard, the two properties that are likely to be most affected by virtue of overlooking are No. 12 Wyatt Avenue to the north-east, and No. 16 Wyatt Avenue to the south-west.

No. 12 is presently vacant of structures and is identical in dimension to the subject site. No. 16 Wyatt is accommodated by an established two-storey detached dwelling with a swimming pool in the rear yard. At present there is no boundary fence between the subject site and No. 12. Accordingly, due consideration is to be given to the level of overlooking the development causes to the current dwelling and pool at No. 16, and how the level of overlooking could impinge upon the opportunities to design a dwelling at No. 12.

First, it is prudent to establish the spatial separation between buildings. The subject development has setbacks which vary from around 6.5m to 10.7m from a side boundary. The dwelling at No. 16 is setback approximately 2.4m from the shared boundary, and therefore a spatial separation of nearly 10m exists between these properties.

Secondly, it is to be established what level of overlooking will occur from the development, and this can reasonably be done by review of the sightlines obtainable from windows and communal open spaces.

The building is designed with angled windows and large blade walls that act to restrict opportunities for direct overlooking into adjoining properties whilst still allowing for the penetration of sunlight into the building. Other windows of the development (i.e. in the front pavilion) facing parallel to the side boundary and rely on the obliqueness of viewing angles, spatial separation and arbitrary treatments (discussed below) to provide an adequate provision of privacy.

For the purpose of this impact assessment it is necessary to detail the overlooking that is caused by the building. In this regard, some windows of the building do overlook adjoining properties, however this would be the same circumstance as any development on the site, regardless of the use of the building. The design of the proposal has ensured no unreasonable overlooking and combined with the physical separation is satisfactory to ensure satisfactory privacy levels are maintained.

Thirdly, consideration should be given to 'arbitrary' measures to enhance privacy (that is, additional measures that cannot be relied upon in perpetuity). The measures additional to the permanent built form privacy mechanisms include a comprehensive landscaping plan, and the opportunity for the erection of a 1.8m side boundary fence. These measures cannot be considered as a permanent solution (such is the nature of vegetation and fences), but will offer a significant enhancement to the provision of privacy

enjoyed by the development.

The level of overlooking caused by the development is found to be reasonable and reasonably mitigated, and the impact of privacy is found to be low.

6. Solar Access

The assessment of the impact of solar access pertains to the level of overshadowing that the proposed development causes upon surrounding properties.

Given the site orientation, setbacks proposed and placement of structures on surrounding allotments, the development will have negligible overshadowing impacts upon adjoining properties and retains a sufficient provision of solar access.

Therefore, the level of overshadowing is found to equate to a low impact on solar access.

Accordingly, it can be reasonably surmised that the impact of the development is low and, in the context of the site and surrounding developments, is unlikely to change the level of amenity enjoyed by the locality.

Requirement 4: A dense bushland buffer will be retained or established along Forest Way. Fencing is not to detract from the landscaped vista of the streetscape.

Comment: The subject development site is not adjacent to nor adjoining Forest Way and accordingly this requirement is not applicable to the subject development.

The architectural plans do not detail any fencing and therefore no fencing is assessed or approved as a part of this application.

Requirement 5: Development in the locality will not create siltation or pollution of Middle Harbour.

Comment: Adequate conditions can be imposed on the consent if the development is found to be worthy of approval which will ensure that siltation and pollution does not enter Middle Harbour.

BUILT FORM CONTROLS

Built Form Compliance Table C8 Belrose North Locality Statement					
Built Form Standard		Required	Proposed	Comment	Compliance
Building Height	Ridge	8.5m	8.3m	The development is beneath the maximum permissible Building Height and thereby satisfies this requirement.	Yes
	Ceiling	7.2m	Max. 8m	Refer to discussion elsewhere.	No
Housing Density		1 dwelling per 20ha	27 dwellings on 0.29 HA	The development seeks a housing density variation of 85.1% and requires the concurrence of the Minister for Planning.	No
Front Setback		20m	20m	The development as proposed complies with the requisite front setback control.	Yes
Side Setback (north east)		10m	6.415m – 15.4m	Refer to discussion elsewhere.	No
Side Setback (south west)		10m	6.0m – 9.15m	Refer to discussion elsewhere.	No
Rear Building Setback		10m	10m	The development maintains a minimum building setback of 10m to the rear boundary, thereby satisfying this requirement.	Yes
Rear Setback Area		Free other than fence and driveway	Driveway	The provision of a driveway within the rear setback area is permissible in accordance with the requirement.	Yes
Bushland setting		50%	50% (1150m ²)	A minimum of 50% of the site is being landscaped with local species, thereby satisfying this requirement.	Yes

GENERAL PRINCIPLES OF DEVELOPMENT CONTROL

General Principles	Applies	Comments	Complies
CL38 Glare & reflections	Yes	The building is not found to result in any unreasonable glare and reflection. If worthy of approval, a condition is recommended restricting the roof of the development to a medium to dark range colour.	Yes
CL39 Local retail centres	No	The site is not identified as being within a local retail centre and accordingly, this principle is not applicable to the assessment of this application.	N
CL40 Housing for Older People and People with Disabilities	No	The development is not for the purpose of Housing for Older People and People with Disabilities.	N/A
CL41 Brothels	No	The development is not for the purpose of a brothel.	N/A
CL42 Construction Sites	Yes	Conditions can reasonably be imposed on any consent to ensure that development does not unreasonably impact on the surrounding amenity, pedestrian or road safety, or the natural environment. Accordingly, this General Principle is addressed by way of condition.	Yes
CL43 Noise	Yes	The development application is accompanied by an acoustic report which demonstrates that the development will not have any unreasonable nor adverse acoustic impacts upon adjoining properties. This report has also been reviewed by Council's Environmental Health Officer who has raised no objections to the development, subject to conditions.	Yes
CL44 Pollutants	No	The development for the purpose of a boarding house is not anticipated to result in the emission of atmospheric, liquid or other pollutants that would unreasonable diminish the amenity of adjacent properties, the locality of waterways.	N/A
CL45 Hazardous Uses	No	Development for the purpose of a boarding house is not found to be a hazardous use.	N/A

CL46 Radiation Emission Levels	No	The development is for the purpose of a boarding house which will not cause excessive radiation emission levels.	N/A
CL47 Flood Affected Land	No	The site is not identified as being flood affected land.	N/A
CL48 Potentially Contaminated Land	Yes	The site has been vacant for an extended period of time and is considered unlikely that the land would be contaminate. Accordingly, the land is suitable for the proposed development.	Yes
CL49 Remediation of Contaminated Land	No	Refer Clause 48 above.	N/A
CL49a Acid Sulphate Soils	No	The site is not identified as being subject to Acid Sulphate Soils and accordingly, no further assessment on this principle is required.	N/A
CL50 Safety & Security	Yes	The development is found to enhance the safety and security of the area compared to the site's vacant present state. The building will allow for casual surveillance and passive overlooking of the surrounding vicinity.	Yes
CL51 Front Fences and Walls	No	The architectural plans do not detail any proposed front fence or wall.	N/A
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	No	<p>Whilst the subject development site is in proximity to a large area of bushland to the north, it does not adjoin this bushland.</p> <p>The subject site is bound by residential properties on all sides which creates an approximate 115m buffer between the site and the bushland.</p> <p>In any event, the development is found not to threaten the nearby bushland and public open spaces.</p>	N/A
CL53 Signs	No	The application does not propose the addition of any signage at the development. If the application is found to be worthy of approval, a condition is included in the recommendation of this report requiring a DA to be lodged for any signage.	N/A

CL54 Provision and Location of Utility Services	Yes	Utility services can be provided and relevant conditions are included in the Recommendation	Yes
CL55 Site Consolidation in 'Medium Density Areas'	No	The site is not within a locality identified as a 'Medium Density Area' and accordingly, no further assessment on this principle is required.	N/A
CL56 Retaining Unique Environmental Features on Site	Yes	The subject development site is not considered to accommodate any <i>distinctive environmental features</i> . Whilst it is acknowledged that the development requires the removal of a large number of trees and significant excavation into the landform, the development is not considered to unreasonably impact upon rock outcrops, remnant bushland and watercourses. The works will not result in any impacts upon environmental features on adjoining sites, particularly the large parcel of bushland to the north.	Yes
CL57 Development on Sloping Land	Yes	<p>The topography of the site (as described earlier in this report) warrants Clause 57 of General Principles to be assessed.</p> <p>The development is found to meet the intent of the clause as the building does progressively step down the slope of the land, reducing in height as it does, and is split into three individual pavilions to reduce scale.</p> <p>The quantum of excavation is discussed in detail earlier in this report with reference to recent Caselaw which justifies the level of excavation.</p> <p>The development application is accompanied by a Geotechnical Investigation by White Geotechnical Group which determines that the development is suitable for the site.</p>	Yes
CL58 Protection of Existing Flora	Yes	Whilst tree removal is proposed the level of replacement planting and landscape regime is satisfactory.	Yes
CL59 Koala Habitat Protection	No	The site is not identified as being a koala habitat protection area, and a review of the site reveals a low chance that koalas would traverse the site. No further assessment on this principle is required.	N/A

CL60 Watercourses & Aquatic Habitats	Yes	Councils Environment Department is satisfied that the proposal will not adversely impact upon any watercourses.	Yes
CL61 Views	Yes	<p>Clause 61 stipulates 'Development is to allow for the reasonable sharing of views'.</p> <p>In determining view loss, the principles outlined within the Land and Environment Court Case <i>Tenacity Consulting Pty Ltd Vs Northern Beaches Council</i> (2004) NSWLEC 140, have been used. In <i>Tenacity Consulting Pty Ltd Vs Northern Beaches Council</i> (2004) NSWLEC 140 the Land and Environment Court provided a four (4) planning principles to be used in the assessment of view loss.</p> <p>The development is not found to cause any unreasonable nor adverse view loss from any surrounding public or private properties, and thereby allows for the reasonable sharing of views.</p>	Yes
CL62 Access to sunlight	Yes	The development ensures a compliant level of solar access remains available to the private open spaces of adjoining sites, and therefore complies with this General Principle.	Yes
CL63 Landscaped Open Space	Yes	The provision of landscaped open space provided by the development and the quantum and variety of plants shown on the landscape plan accompanying the application adequately demonstrate that the development can satisfy the objectives of this General Principle.	Yes
CL63A Rear Building Setback	Yes	<p>In localities where a rear building setback applies, the objectives of the rear building setback controls are:</p> <ul style="list-style-type: none"> • to create a sense of openness in rear yards, and • to preserve the amenity of adjacent land, and • to maintain the visual continuity and pattern of buildings, rear gardens and landscape elements, and • to provide opportunities to maintain privacy between dwellings, and • in medium density areas, to minimise the visual effect of podiums and to control the density of development, and 	Yes

		<ul style="list-style-type: none"> to provide opportunities for the planting of substantial native trees. <p>The proposed development has a 10m rear setback with a driveway traversing through the setback area. The provision of rear setback is found to be consistent with the objectives of CL63A in that it does not detract from a sense of openness; does not impinge or impact upon the amenity of adjacent land; is not inconsistent with the pattern of driveways upon surrounding allotments; does not detract from the provision of privacy afforded to other allotments and; provides opportunities for the planting and establishment of substantial native trees as demonstrated on the landscaped plans accompanying the development application.</p>	
CL64 Private open space	Yes	The development provides a sufficient provision of private open space (greater than 10m ²) in the form of communal rooms, north-facing terrace and garden areas.	Yes
CL65 Privacy	Yes	<p>The subject site is bound by a dwelling house (No. 16 Wyatt Avenue) to the west, and a vacant lot to the east. Despite being vacant land, consideration is given to the privacy of both adjoining allotments.</p> <p>The provision of privacy provided by the development is found to be satisfactory by virtue of the building setbacks, architectural treatment and orientation of the windows, and the proposed provision of landscaping.</p> <p>Accordingly, it is found that the development provides a satisfactory provision of privacy and does not cause unreasonable direct overlooking into habitable rooms and principal private open space of other dwellings (both existing and future).</p>	Yes
CL66 Building bulk	Yes	The proposal has been designed to ensure the building elements contain articulation and a built form that is contained in three pavilion like forms. This combined with the front, side and rear setbacks ensures the proposal has a bulk and scale when viewed from the public domain maintains the residential context of the street and area.	Yes

CL67 Roofs	Yes	The roof design of the building is considered to be satisfactory in that it contributes to the overall architectural form and facilitates clerestory windows for solar penetration and stormwater collection.	Yes
CL68 Conservation of Energy and Water	Yes	The proposal includes energy and water saving elements.	Yes
CL69 Accessibility – Public and Semi-Public Buildings	No	The development is not a public or semi-public building.	N/A
CL70 Site facilities	Yes	The design of the proposal has placed service function structures like clothes drying and waste storage in locations that are not visible from the public domain or Wyatt Avenue. Therefore the development complies with the General Principle.	Yes
CL71 Parking facilities (visual impact)	Yes	This General Principle requires that car parking facilities are to be screened from the public domain, and that it be located underground or in a semi-basement. The entrance to the carpark is located at the rear of the site and is not visible from the public domain. The carpark is located in a partial semi-basement / basement to reduce views of the car parking area. Therefore, the development complies with the General Principle.	Yes
CL72 Traffic access & safety	Yes	The development application and proposed vehicle access point has been reviewed by Council's Traffic Engineer whom raises no objections to the development, subject to conditions as recommended.	Yes
CL73 On-site Loading and Unloading	Yes	The development does not have any formal on-site loading and unloading zone, however this is found to be satisfactory as such occurrences would be infrequent, and the majority of loading and unloading would generally be restricted to clothing and accessories to fill a single bedroom. The development has sufficient areas either on the driveway or in the basement car park to facilitate the loading and unloading of items	Yes

		<p>without impacting on the amenity or traffic safety of occupants of the development.</p> <p>Therefore, the development complies with the General Principle.</p>	
CL74 Provision of Carparking	Yes	<p>Schedule 17 of the WLEP 2000 does not include a car parking ratio for Boarding House developments and as such, the development was designed in accordance with the SEPP ARH standards that applied at the time of lodgement (being 0.2 spaces per room).</p> <p>At this ratio, the development required 5.4 parking spaces. After lodgement of the application, the SEPP ARH parking standards changed to 0.5 space per room, equating to a parking requirement of 13.5 spaces. However, as detailed later in this report, SEPP ARH does not apply to this development either.</p> <p>The proposal includes 10 car parking spaces, 8 motorcycle spaces and a large quantity of bicycle parking spaces.</p> <p>Accordingly, the provision of car parking must be solely assessed against General Principle Clause 74.</p> <p>Clause 74 requires that adequate off-street carparking is to be provided with regard to:</p> <ul style="list-style-type: none"> • the land use • availability of public transport • availability of alternative car parking <p>The development is a Category Two land use and is located in proximity to a bus stop that is frequently used throughout the day. There is unrestricted car parking available on Wyatt Avenue, however reliance on street parking is not found to be a sustainable solution in perpetuity, and can therefore only be relied upon as a <i>bonus</i> or <i>additional</i> parking when a development provides a satisfactory provision of car parking on site.</p> <p>It is concurred with a number of submissions that additional car parking on the site would be of benefit to occupants of the development, however it is prudent to understand that there is no information put forth by a suitably qualified person, and therefore this Assessment Report relies upon the traffic and parking assessment provided by the applicant, and the independent traffic and parking</p>	Yes

		<p>assessment undertaken by Council's traffic engineer.</p> <p>As both of these assessments are favourable to the provision of car parking provided, it is found that the development satisfies this General Principle.</p>	
CL75 Design of Carparking Areas	Yes	Council's Traffic Engineer has reviewed the proposed car park design and is satisfied that it is compliant with the relevant Australian Standards. If the application is to be worthy of approval, conditions of consent requiring compliance with Australian Standards will ensure that the car park is built correctly.	Yes
CL76 Management of Stormwater	Yes	The provision of stormwater management has been assessed by Council's Development Engineer and Stormwater Assets team who raises no objection to the development, subject to Deferred Commencement Conditions as included in the recommendation of this report.	Yes
CL77 Landfill	Yes	The development will require a minimal amount of landfill adjacent to the areas of excavation. The quantum of fill is not of a scale or magnitude that would have any adverse impacts upon the visual and natural environment or the amenity of adjoining surrounding properties. Accordingly, the development complies with this General Principle.	Yes
CL78 Erosion & Sedimentation	Yes	Standard conditions can be imposed on the consent if the application is worthy of approval which requires adequate erosion and sedimentation fencing and measures to be in place. Accordingly, the development can comply with this General Principle.	Yes
CL79 Heritage Control	No	The site is not within the vicinity of any heritage item.	N/A
CL80 Notice to Metropolitan Aboriginal Land Council	Yes	<p>Upon receipt, the development application was referred to the Aboriginal Heritage Office for assessment.</p> <p>On 16 May 2018 Council met an Officer from the Aboriginal Heritage office on the site.</p>	Yes

		<p>The assessment concluded that there were no visible items of Aboriginal history or significance on the site.</p> <p>Standard conditions are imposed on the recommendation of this report requiring works to stop if any items of Aboriginal significance are located during excavation or building.</p> <p>(NB: Refer to referral comments later in this report).</p>	
CL82 Development in the Vicinity of Heritage Items	No	The development is not within the vicinity of any heritage items.	N/A
CL83 Development of Known or Potential Archaeological Sites	No	The site is not on land that is known to accommodate any potential archaeological sites. It is not expected or anticipated that any potential archaeological sites or items will be located during the excavation period of this application.	N/A

SCHEDULES

Schedule	Applicable	Compliant
Schedule 5 State policies	Yes	Yes
Schedule 6 Preservation of bushland	Yes	Yes
Schedule 7 Matters for consideration in a subdivision of land	No	N/A
Schedule 8 Site analysis	Yes	Yes
Schedule 9 Notification requirements for remediation work	No	No
Schedule 10 Traffic generating development	N/A	N/A
Schedule 11 Koala feed tree species and plans of management	N/A	N/A
Schedule 12 Requirements for complying development	N/A	N/A
Schedule 13 Development guidelines for Collaroy/Narrabeen Beach	N/A	N/A

Schedule 14 Guiding principles for development near Middle Harbour	N/A	N/A
Schedule 15 Statement of environmental effects	N/A	N/A
Schedule 17 Carparking provision	N/A	N/A

OTHER RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS:

SEPP – (Building Sustainability Index: BASIX) 2004

The development application was not lodged with a BASIX Certificate. During the assessment of the application, Caselaw from the Land & Environment Court of NSW established that individual rooms in a boarding house can be classified as 'dwellings' in circumstances where rooms can be reasonably described as *self-contained and capable of being occupied or used as a separate domicile*. Such is the case for this application, where each boarding rooms has kitchen, bathroom and living facilities.

Accordingly, following a request from Council, the applicant supplied a BASIX Certificate for the development. If this application is found to be worthy of approval, a condition of consent endorsing the BASIX Certificate is to be imposed.

(Note: refer *SHMH Properties Australia Pty Ltd v City of Sydney Council [2008] NSWLEC 66*)

SEPP (Affordable Rental Housing) 2009 (SEPP ARH)

SEPP ARH is generally the prevailing environmental planning instrument in the assessment of boarding house developments; however, such is not the case for this particular application.

Clause 26 of the SEPP details the zones to which the boarding house policy applies, and these zones are limited to:

- (a) Zone R1 General Residential, or
- (b) Zone R2 Low Density Residential, or
- (c) Zone R3 Medium Density Residential, or
- (d) Zone R4 High Density Residential, or
- (e) Zone B1 Neighbourhood Centre, or
- (f) Zone B2 Local Centre, or
- (g) Zone B4 Mixed Use.

The subject site is not within a 'zone', rather it is in the C8 Locality pursuant to WLEP 2000 which does not conform to the 'standard instrument.'

It must then be determined if this locality can be considered as an *equivalent land use zone* pursuant to Clause 5 of the SEPP, and pursuant to Clause 1.6 of the SEPP (Exempt and Complying Development Codes) 2008.

Clause 1.6 (1A) reads:

Land identified as "Deferred matter" on the Land Application Map within the meaning of Warringah Local Environmental Plan 2011 is, for the purposes of this Policy, taken to be in Zone E3 Environmental Management.

Therefore, it can be considered that the C8 Locality is the equivalent zoning of E3 Environmental Management of a standard instrument.

Clause 26 of SEPP ARH does not stipulate that the boarding house policy applies to Zone E3 Environmental Management and therefore, the SEPP ARH does not apply to the development for the purpose of a boarding house upon this land.

Notwithstanding the applicability of the SEPP ARH, the WLEP 2000 lacks controls pertaining to the assessment of boarding house developments, and it is therefore warranted to assess the application against the relevant provisions of the SEPP ARH.

An assessment of the application against Clause 30 (1) – Standards for boarding houses – of the SEPP ARH follows, and it is to be fore noted that this assessment against the SEPP ARH holds no determining weight to the recommendation of this application:

- (a) If a boarding house has 5 or more boarding rooms, at least one communal living room will be provided.**

The boarding house has more than 5 rooms and more than 1 communal room, and therefore complies with this requirement.

- (b) No boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m².**

The architectural plans do not differentiate the floor area of each whole boarding room commensurate to the dimension excluding kitchen and bathroom facilities. In this regard, each room has an area of between 27m² and 31m².

Insufficient information is supplied to ascertain whether this development would comply with this requirement.

- (c) No boarding room will be occupied by more than 2 adult lodgers.**

No boarding room proposed has the capacity to accommodate more than 2 adult lodgers, and this is buttressed by the accompanying Plan of Management.

Accordingly, the development complies with this requirement.

- (d) Adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodged.**

Each boarding room has a private kitchen and bathroom, thereby satisfying this requirement.

- (e) If the boarding house has a capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager.**

The development has the capacity to accommodate more than 20 lodgers. A boarding room has been dedicated to be occupied by a boarding house manager.

Accordingly, the development complies with this requirement.

- (f) If the boarding house is on land zoned primary for commercial purposes, no part of the ground floor of the boarding house that fronts a street will**

be used for residential purposes unless another environmental planning instrument permits such a use.

The subject site is not zoned primarily for commercial purposes and therefore this control does not / would not apply.

(g) At least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.

The development has 27 boarding rooms which requires 13.5 car parking spaces and 27 bicycle spaces, bicycle spaces and motorcycle spaces.

The development provides 10 car parking spaces, 8 motorcycle spaces and an undisclosed quantum of bicycle spaces (although it appears to be in excess of 27).

The development would not comply with this requirement.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP 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 vacant 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.

EPA REGULATION CONSIDERATIONS:

Regulation Clause	Applicable	Conditioned
Clause 92 (Demolition of Structures)	Yes	Yes

Clause 93 & 94 (Fire Safety)	Yes	Yes
Clause 98 (BCA)	Yes	Yes

REFERRALS

Referral Body Internal	Comments	Consent Recommended
Building Assessment – Fire and Disability upgrades	Proposal review limited to final certification issues only in the event the proposal is approved. No project /proposal assessment conducted. Accordingly, this assessment is restricted to simply provision of a condition for Final Certification of Essential Services and an ongoing Fire Safety Services Maintenance condition.	Yes
Environmental Health (Industrial)	No objections to the proposed development, subject to conditions as recommended.	Yes
Landscape Officer	<p><u>Additional information and amended plans. Comment 21/09/2018</u></p> <p>Following further discussion and review of amended plans, it is apparent that retention of the trees along the north eastern side of the site is not feasible due to vehicle passing bays for RFS access as well as stormwater infrastructure upgrade works by Council.</p> <p>In view of the above, the issues raised previously regarding relocation of the drive to enable tree retention are no longer pressed.</p> <p>In consideration of the information provided, the DA is considered acceptable with regard to the relevant controls relating to landscape issues, subject to conditions.</p> <p><u>Original Comment</u></p> <p>Concern is raised regarding side setback landscape treatments which may be able to be addressed via design amendments.</p> <p>The proposed driveway along the north eastern side of the site occupies a significant proportion of the side setback. It is noted that side setbacks proposed are less than those required under the planning controls.</p> <p>The resultant area for landscape planting along the north eastern side is relatively narrow adjacent to the building. Integration into the locality and improved alignment with the planning controls would be better achieved if the driveway could be narrowed to single lane (with passing bays), or, preferably, removed from the north eastern side and access directly under the building from Wyatt Ave, providing more opportunity for enhancing the landscape in the side and rear setbacks.</p> <p>It is unclear why the driveway needs to continue onto the adjoining property through the subject Lot when existing</p>	Yes

	<p>access is available to the adjoining property off Wyatt Avenue. Reducing or removing the driveway along the length of the north eastern boundary would provide for better integration of building bulk, maintaining and enhancing the character of the Locality and improved pedestrian access and use of outdoor spaces.</p> <p>At this stage the proposal is not supported with regard to landscape issues, however if amended plans or additional information regarding the comments above are provided, additional assessment can be undertaken.</p> <p>It is noted that several trees along the Wyatt Ave frontage of the site indicated to be retained on the Architectural Plans will be required to be removed (as indicated on the Landscape Plans) to accommodate the works proposed. It is also noted that the Landscape Plans do not provide for local native species as required under the Locality Statement - Bushland setting</p> <p><i>Bushland setting</i></p> <p><i>A minimum of 50 per cent of the site area is to be kept as natural bushland or landscaped with local species.</i></p> <p>These issues can, however, be addressed via conditions.</p>	
NECC (Development Engineering)	<p>Development Engineers have reviewed the proposal and raise no objections subject to condition.</p> <p>Appropriate conditions are also issue to comply with Council's Traffic Engineers, Roads Assets, Stormwater Assets Teams with respect to driveway width, kerb and gutter alignment, management of public road stormwater, etc.</p>	Yes
NECC (Riparian Lands and Creeks)	<p>No objection to the proposal as the property is not identified as being subject to detailed Waterways and Riparian Lands Assessment.</p>	Yes
NECC (Water Management)	<p>No objection to the proposal, subject to conditions.</p>	Yes
Urban Design	<p>No objections to the proposed development and no conditions recommended.</p>	Yes
Traffic Engineer	<p>(31 May 2018)</p> <p><i>The proposal is for construction of a boarding house containing 27 rooms.</i></p> <p><i>The car parking and bicycle parking provision complies with the SEPP requirements, but there are 4 motorbike spaces provided within the car park while the provision of 6</i></p>	Yes

	<p><i>motorbike spaces designed in accordance with Australian Standards AS2890.1:2004 is required.</i></p> <p><i>The passing bay proposed next to the access driveway shall be extended to kerb providing a 5.5m wide access driveway and 5.5m wide passing bay for the first 6m of the driveway from the property boundary.</i></p> <p><i>Footpath and kerb and guttering shall be constructed at cost of the applicant from its boundary with No.16 Wyatt Avenue continuing to the existing footpath and kerb guttering outside No.12 Wyatt Avenue. The footpath and kerb and guttering shall be consistent with the existing footpath and kerb and guttering and is to meet the Council's development engineer's requirements.</i></p> <p><i>The proposed passing bay on the northern side of the site is to be improved by extending the passing bay and provision of a convex mirror improving the inter-visibility between vehicles exiting the car park and the vehicles turning onto the ramp leading to the car park.</i></p> <p><i>In view of above, no objection is raised to the proposal subject to conditions.</i></p>	
Waste Officer	No objections to the development.	Yes

Referral Body External	Comments	Consent Recommended
Aboriginal Heritage Office	<p>(6 April 2018)</p> <p><i>Reference is made to the proposed development at the above area and Aboriginal heritage.</i></p> <p><i>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</i></p> <p><i>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</i></p> <p><i>Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council should be contacted.</i></p>	Yes – subject to conditions
Ausgrid	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.	Yes

<p>Sydney Water</p>	<p>(24 April 2018)</p> <p><i>Due to the proximity of the proposed development to Sydney Water assets, we recommend that Council imposing the following conditions of consent:</i></p> <p>Building Plan Approval</p> <p><i>The approved plans must be submitted to the Sydney Water Tap in™ online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.</i></p> <p><i>The Sydney Water Tap in™ online self-service replaces our Quick Check Agents as of 30 November 2015.</i></p> <p><i>The Tap in™ service provides 24/7 access to a range of services, including:</i></p> <ul style="list-style-type: none"> • <i>building plan approvals</i> • <i>connection and disconnection approvals</i> • <i>diagrams</i> • <i>trade waste approvals</i> • <i>pressure information</i> • <i>water meter installations</i> • <i>pressure boosting and pump approvals</i> • <i>changes to an existing service or asset, e.g. relocating or moving an asset.</i> <p><i>Sydney Water's Tap in™ online service is available at:</i></p> <p>https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm</p> <p>Section 73 Certificate</p> <p><i>A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water.</i></p> <p><i>It is recommended that applicants apply early for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.</i></p> <p><i>Application must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.</i></p>	<p>Yes – subject to conditions</p>
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Section 4.15 "Matters for Consideration"	
Section 4.15 (1) (a)(i) – Have you considered all relevant provisions of any relevant environmental planning instrument?	Yes
Section 4.15 (1) (a)(ii) – Have you considered all relevant provisions of any provisions of any draft environmental planning instrument	Yes
Section 4.15 (1) (a)(iii) – Have you considered all relevant provisions of any provisions of any development control plan	Yes
Section 4.15 (1) (a)(iiia) - Have you considered all relevant provisions of any Planning Agreement or Draft Planning Agreement	Yes
Section 4.15 (1) (a)(iv) - Have you considered all relevant provisions of any Regulations?	Yes
Section 4.15 (1) (b) – Are the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality acceptable?	Yes
Section 4.15 (1) (c) – Is the site suitable for the development?	Yes
Section 4.15 (1) (d) – Have you considered any submissions made in accordance with the EPA Act or EPA Regs?	Yes
Section 4.15 (1) (e) – Is the proposal in the public interest?	Yes

SECTION 2 – ISSUES

PUBLIC EXHIBITION

The subject application was publicly exhibited in accordance with the EPA Regulation 2000 and the applicable Development Control Plan.

As a result of the public exhibition of the application Council received 98 submissions. A list of the persons which made submissions against the application can be found attached to this report as an **Appendix**.

Of the submissions received, approximately 20% were in support, and 80% were opposed to the development.

A preliminary review of the application raised issues that were provided to the applicant by letter dated 10 August 2018. The applicant provided additional information and revised plans on 21 August 2018 addressing Council's concerns. These plans were not renotified or advertised in accordance with the WDCP 2000 requirements as the amended application differs only in minor respects from the original application, and does not result in a greater environmental impact.

The submissions received raised the following issues / concerns with the application:

1. Character, location and DFC
2. Built Form and Building Bulk
3. Traffic and Parking
4. SEPP ARH applicability
5. Social concerns
6. Bushfire concerns
7. Construction impacts
8. Operational impacts (including noise and light)
9. Trees, Wildlife Corridor and Unique Environmental Features
10. Other

1. **Character, location and DFC**

Submissions received comment, both in support and in objection, on the location of the site and development on Wyatt Avenue for the purpose of a boarding house development.

Comment

Development for the purpose of a boarding house is an innominate Category Two land use within the C8 Locality, and it should additionally be noted that boarding houses are permitted on the adjoining R2 land pursuant to SEPP ARH and the WLEP 2011. Accordingly, development for the purpose of a boarding house is permitted with consent upon the land by the prevailing instrument (WLEP 2000) and the site location is therefore appropriate for the typology of development.

A detailed assessment of the DFC earlier in this report has established that the proposal is consistent with the DFC of the C8 Belrose North locality and it need not be reproduced again.

Several submissions received also discuss the 'character' of the physical form of the development, and of the residents of the development. These matters are discussed in their respective clauses below (2 and 5).

2. **Built Form and Building Bulk**

Submissions received oppose the development due to its size, scale and architecture, and note the various built form variations sought as a part of this application.

Comment

There are several notable factors that must be understood prior to assessing the bulk of a development. The first is that insofar as a building design is considered, Council is not the 'design police', and therefore the assessment is limited to compliance with the requisite built form controls and General Principles – in this case pertaining to building bulk and materiality.

The second factor pertains to compatibility with other developments. 'Compatible' does not refer to 'being the same' (i.e. being identical to adjacent buildings), rather compatible can generally refer to 'being able to co-exist in harmony'.

As noted earlier in this report the dominant land use of the locality is not detached dwellings, and it could be demonstrated that the scale of the building is not dissimilar to other buildings in the locality. However, for the circumstance of this application it is also reasonable to consider the development compared to developments in the R2 land adjoining the site to the south.

The building will unarguably be one of the larger buildings along Wyatt Avenue, and at the time of writing is thought to be capable of accommodating the largest number of persons in a residential capacity. Despite this size, the building is considered to be capable of co-existing in harmony with surrounding properties for the reasons detailed throughout this report (i.e. provision of privacy, operational management etc.).

An assessment of the built form control variations can be found elsewhere in this report.

3. **Traffic and Parking**

A number of submissions received from local residents note that Wyatt Avenue lacks car parking, and the submissions primarily relate this lack to the existence of the John Colet School and the activities associated with Wyatt Reserve. Additional concerns are raised regarding the congestion of the local road network and Forest Way. The submissions note that the development is likely to further exacerbate the traffic and congestion issues.

Comment

The development is accompanied by a detailed traffic and parking report prepared by ML Traffic Engineers, and this report has been independently assessment by Council's Traffic Engineers.

Council's Traffic Engineers raise no objection to the provision of car parking provided by the development, or to any impacts that may be caused by the development. Accordingly, this matter is considered not to warrant the refusal of

the application.

4. **SEPP ARH Applicability**

Submissions received note that the SEPP Affordable Rental Housing (ARH) does not apply to the development and state therefore that the application should be rejected.

Comment

SEPP ARH is not applicable to the development, however development for the purpose of a boarding house is an innominate use under WLEP 2000 as a Category Two development. Therefore boarding houses are still a permissible form of development on the site.

This matter does not warrant the refusal of the application.

5. **Social Concerns**

A number of submissions received raise concern that residents of a boarding house are not long-term residents are therefore: have no respect for the community, increase crime rate for the area, put children at danger etc. [sic]. Additional concerns were received, however the content of these submissions contain derogatory and defaming remarks that need not be considered in the assessment of this application.

Comment

Whilst it is concurred with that the residents of a boarding house are a more transient population than residents whom have lived in their homes from 20 years, this by no means correlates to the concerns that have been raised.

A number of the concerns raised are unfounded and are therefore not for consideration under this application.

The assessment of the application has found that potential residents of the boarding house will have no adverse impact on the locality. Therefore this matter does not warrant the refusal of the application.

6. **Bushfire Concerns**

Submissions received raise concern regarding the proximity of the development to bushland and the evacuation of residents in the event of a bushfire.

Comment

The subject site is not upon land identified as 'bushfire prone land', although it is noted that such an attribute exists north of the site and affects other properties. Therefore, no further assessment is required or warranted on these matters.

7. **Construction Impact**

Concern is raised in submissions received that the construction of the development may have adverse impacts upon the surrounding environment by virtue of sediment and erosion entering the bushland.

Comment

This concern is concurred with and can be reasonably addressed by way of condition, if the NBLPP is of the mind to approve the application.

8. Operational Impacts

Concern is raised in submissions received regarding the acoustic impacts that the development may cause once in operation.

Comment

Whilst it is implicit that a premises accommodating 54 persons has greater opportunities to produce more noise than a premises 5 persons, a boarding house is subject to stringent requirements that a standard dwelling house would not be required to meet.

That is, the application is accompanied by a detailed Operational Management Plan that goes through how the development will be managed. In addition the application is buttressed by an Acoustic Report that details that the development is unlikely to have any adverse or unreasonable acoustic impacts upon adjoining properties.

Accordingly, the activities of the boarding house and the use of outdoor areas etc. is limited as per the Operational Management Plan. A standard dwelling house does not have such requirements and there is no way to restrict noise. It therefore could not be said that a boarding house will be a 'bad neighbour'.

This matter has been reviewed by Council's Environmental Health Officers whom raise no objections to the development, subject to conditions as recommended.

9. Trees, Wildlife Corridor and Unique Environmental Features

Concerns are raised in the majority of submissions received regarding tree removal, and the subsequent impact this may have upon any wildlife corridors and the uniqueness of the site.

Comment

The tree removal is supported based on Council's Landscape Officers and Natural Environment Officers advice and the provision of replacement planting and landscape regime will offset the adverse effects of the tree removal.

10. Other

Submissions received raise a number of other concerns throughout regarding other recent development applications in the area, interests of the applicant etc.

These matters are not for consideration under the EP&A Act 1979 and are therefore not discussed within this report.

Other issues that are raised and are considered in this report include view loss and light spill.

Comment

Any development on this site is inevitably going to result in a some magnitude of visual obstruction of vistas from the public and private domain, by virtue of having a building on a presently vacant block of land. The view loss experienced is considered to be negligible and is considered to be consistent with view loss caused by other developments on the northern side of Wyatt Avenue.

Comment

Light spill is considered reasonable based on the design of the proposal, its residential use and physical separation from adjoining residential premises.

BUILT FORM CONTROLS

As detailed within Section 1 (Code Assessment) the proposed development does not comply with the following Built Form Controls, accordingly, further assessment is provided hereunder.

NON-COMPLIANCE: Housing Density

The WLEP 2000 provides the following built form standards pertaining to housing density (number added):

- i. *The maximum housing density is 1 dwelling per 20 ha of site area, except:*
- ii. *where this standard would prevent the erection of one dwelling on an existing parcel of land, being all adjacent or adjoining land held in the same ownership on 8 March 1974 and having a combined area of not less than 2 ha, and*
- ii. *However, consent may be granted for development that will contravene these housing density standards but, if by more than 10 per cent, only with the concurrence of the Director.*
- iii. *The matters which shall be taken into consideration in deciding whether concurrence should be granted are:*
- iv. (a) *whether non-compliance with the development standard in issue raises any matter of significance for State or regional environmental planning, and*
- v. (b) *the public benefit of maintaining the planning controls adopted by this plan.*

There are additional notes in the standard which discuss how to calculate housing density, but these need not be reproduced for this report.

The standard is prescriptive in that the housing density standard for this development has an exception provision as per (ii) above. This relates to the background and history section of this report in the former half as the subject site and the adjoining Lot 2616 DP 752038, known as 10-12 or 12 Wyatt Avenue, were held in the same ownership at the specified date, as per the below reproduced map:





The two sites shown to be in the same ownership at 8 March 1974 are very similar in shape and size, and have a total approximate area of 4,596 square metres (or 0.45 HA).

It is also prudent to establish that recent Caselaw clarified that each room in a boarding house can be defined as a 'domicile' (therefore dwelling) as previously discussed under the SEPP BASIX section of this report.

Refer SHMH Properties Australia Pty Ltd v City of Sydney Council

Accordingly, for the purpose of the housing density assessment, the subject site is proposed to accommodate 27 dwellings.

Despite the two adjoining sites being in the same ownership at 8 March 1974 the combined area is lesser than 2HA, and accordingly the exception provisions of the control do not apply.

Therefore, the calculable variation to the housing density standards is 85.1%, being 27 dwellings on 0.229 HA.

Given that this quantum of variation is greater than 10%, the concurrence of the 'Director' (Minister of Planning or their delegates) is required, should the application be found worthy of support by the NBLPP.

The standard contains two matters for consideration for the Director in determining whether to grant concurrence or not, being:

- (a) *whether non-compliance with the development standard in issue raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the planning controls adopted by this plan.*

It is not for Council to determine whether or not concurrence should be granted, however the WLEP 2000 lacks any objective assessment when considering the variation to the housing density standard other than the above. It is therefore warranted to address the two matters for consideration.

Whether non-compliance with the development standard in issue raises any matter of significance for State or regional environmental planning.

There are no known environmental planning instruments that would consider the variation request to be detrimental to any matter of significant for State or regional planning and therefore, the development satisfies this requirement.

The public benefit of maintaining the planning controls adopted by this plan.

The WLEP 2000 is 18 years old at the time of writing this report and, comparative to other similar environmental planning instruments, is outdated.

There are several matters that establish that there is no discernible public benefit in maintaining the planning controls adopted by this plan:

- Any form of residential development on this land would be contrary to the housing density standard and therefore if the control were to be strictly enforced, the land would be undevelopable.
- The site is bound by land to the south that is zoned for R2 Low Density Residential development pursuant to the Warringah Local Environmental Plan 2011. Each of these R2 sites located some 20m away could accommodate a boarding house development of the same scale as the proposal.
- The development provides housing for essential workers and for alternate housing choices. The need for affordable housing in the Northern Beaches is in the public interest and need not be justified in this report.
- The development complies with the DFC of the C8 Locality.
- The development has no unreasonable or adverse impact upon adjoining land.

Therefore, it can be surmised that there is public benefit in the development itself, and that strictly maintaining the housing density development standard is contrary to the public benefit and stagnates the ability to develop the site.

Accordingly, the variation sought to the housing density standard is supported in this particular circumstance.

If the NBLPP is of the mind to approve this application, concurrence must be sought by the Director for the variation to the housing density standard prior to consent being issued.

NON-COMPLIANCE: Building Height (ceiling height)

The development control requires that buildings are not to exceed 7.2 metres from natural ground level to the underside of the ceiling. The development attains a maximum ceiling height of 8 metres resultant of the raked ceiling design and therefore varies the control by up 11.1% (800 mm).

The objectives of the building height development controls are to:

- Ensure that development does not become visually dominant by virtue of its height and bulk.

Comment: The proposed building will remain generally well below the overall height limit of 8.5m, and generally steps down the slope of the site, helping to minimise the height and bulk. The proposal is designed in three pavilion-like forms, and these are well articulated to further break up solid walls and mitigate against the overall bulk of the building. Given these features the proposal is not considered to result in a building that will be unreasonably visually dominant by virtue of height or bulk.

- Preserve the amenity of surrounding land.

Comment: The amenity of surrounding land will be generally preserved to a reasonable level, as assessed in the General Principles and Public Exhibition sections of this report. The proposed ceiling height does not cause the development to breach the overall 8.5m height limit, and does not result in any unreasonable impacts on overshadowing, privacy, view loss or general amenity.

- Ensure that development responds to site topography and minimises excavation of the natural landform.

Comment: The proposal involves a significant amount of excavation to allow for basement car parking. However, as discussed in the Desired Future Character section of this report, this excavation allows the development to respond better to the topography by reducing the overall height and bulk of building visible above the ground surface. The building steps down the slope in response to the topography of the site, and in this way is generally consistent with this objective.

- Provide sufficient area for roof pitch and variation in roof design rather than a flat roof.

Comment: The proposed development is generally well below the overall 8.5m height limit, and sufficient room remains for variation in roof design. The proposed roof form is raked, with a generally low pitch (not flat), and is considered to fit with the overall architectural style of the building.

NON-COMPLIANCE: Rear and side building setback (side setbacks)

Development is required to maintain minimum side building setbacks of 10m. Side setback areas are to be landscaped and free of any structures, carparking or site facilities other than driveways and fences. The proposed boarding house will be setback 6.415m – 15.4m on the north east side, and 6.0m – 9.15m on the south west side.

The objectives of the side setback requirements are to:

- Preserve the amenity of the surrounding land.

Comment: The proposal will generally maintain a reasonable level of amenity to surrounding land, as assessed throughout this report. The development will not unreasonably overshadow neighbours, nor create any unreasonable privacy impacts or view loss. This has been discussed in detail in the Desired Future Character and Public Exhibition sections of this report.

- Provide separation between buildings.

Comment: The proposed setbacks will maintain a significant separation between buildings. The neighbouring building to the south west will be a minimum of between 8m and 10m from the proposed building, and there is currently no building adjacent to the north east (although the proposed side setback on that side is larger than to the south west). This provides ample room for significant landscaping to contribute to amenity, and the spatial separation between buildings is considered to be adequate.

- Provide opportunities for landscaping.

Comment: The proposed side setbacks provide opportunities for landscaping. The proposal includes a comprehensive landscaping plan that will result in a substantial number of trees being planted on site, with many of the new and retained trees being concentrated along the side boundaries within the side setbacks.

- Create a sense of openness.

Comment: The proposed building is well articulated along both side elevations, and provides varied side setbacks and architectural features to break up the built form and help to create a sense of openness. The side setbacks provided, while below the minimum requirement, still enable significant landscaping and separation between buildings. A sense of openness is considered to be generally attained.

Clause 20(1) stipulates:

“Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State environmental planning policy.”

In determining whether the proposal qualifies for a variation under Clause 20(1) of WLEP 2000, consideration must be given to the following:

General Principles of Development Control

The proposal is consistent with the General Principles of Development Control and accordingly, does qualify to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “General Principles of Development Control” in this report for a detailed assessment of consistency).

Desired Future Character of the Locality

The proposal is consistent with the Locality's Desired Future Character Statement and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “Desired Future Character” in this report for a detailed assessment of consistency).

Relevant State Environmental Planning Policies

The proposal has been assessed as being consistent with all applicable State Environmental Planning Policies. (Refer to earlier discussion under ‘State Environmental Planning Policies’). Accordingly, the proposal qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1). As detailed above, the proposed development satisfies the requirements to qualify for consideration under Clause 20(1). It is for this reason that the variation to the housing density, ceiling height, and side setbacks, (Development Standards) pursuant to Clause 20(1) is supported.

SECTION 3 – SITE INSPECTION ANALYSIS

Site constraints and other considerations	
Bushfire Prone?	No
Flood Prone?	No
Affected by Acid Sulphate Soils	No
Located within 40m of any natural watercourse?	Yes

Site constraints and other considerations	
Located within 1km landward of the open coast watermark or within 1km of any bay estuaries, coastal lake, lagoon, island, tidal waterway within the area mapped within the NSW Coastal Policy?	No
Located within 100m of the mean high watermark?	No
Located within an area identified as a Wave Impact Zone?	No
Any items of heritage significance located upon it?	No
Located within the vicinity of any items of heritage significance?	No
Located within an area identified as potential land slip?	No
Is the development Integrated?	No
Does the development require concurrence?	Yes
Is the site owned or is the DA made by the "Crown"?	No
Have you reviewed the DP and s88B instrument?	Yes
Does the proposal impact upon any easements / Rights of Way?	No

SITE INSPECTION / DESKTOP ASSESSMENT UNDERTAKEN BY:

Does the site inspection confirm the assessment undertaken against the relevant EPI's <Section's 1 & 2>?	Yes
Are there any additional matters that have arisen from your site inspection that would require any additional assessment to be undertaken?	No
Are there any existing unauthorised works on site?	No
If YES has the application been referred to compliance section for comments?	N/A

SECTION 4 – APPLICATION DETERMINATION

Conclusion:

The proposal has been assessed against the relevant matters for consideration under Section 4.15 of the EP&A Act 1979. 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.

RECOMMENDATION**DEFERRED COMMENCEMENT APPROVAL**

- A. THAT Council as the consent authority grant a Deferred Commencement Development Consent being subject to a Five (5) year time frame for Deferred Commencement Consents detailed within Section 95 of the EPA Act 1979 to DA2018/0401 for Construction of a Boarding house with 27 rooms including a managers residence on land at Lot 2597 DP 752038, 14 Wyatt Avenue, BELROSE, subject to the conditions printed below:
- B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

DEFERRED COMMENCEMENT CONDITIONS**1. Stormwater Drainage**

This consent must not operate until the following deferred commencement conditions have been satisfied.

1. The flood report prepared by Northern Beaches Consulting Engineers dated 8 March 2018 shall be amended to include appropriate modelling, design and reporting sufficient to inform works required to manage overland flows. The flood report is to demonstrate that for the proposed works, there are no adverse effects on neighbouring lots (including the road reserve) relating to changes in flood levels, velocities or overland flow location, for the 1%, 5%, and 20% AEP events.

2. Plans of the proposed works shall be submitted to Council that demonstrate compliance with the requirements of Condition 1. These plans are to:

- a) Include concept plans demonstrating how drainage will be conveyed through the proposed stormwater drainage works and kerb and gutter for the full frontage of 14 Wyatt Avenue.
- b) Demonstrate that any stormwater runoff from the public road that will be captured by the proposed kerb and gutter, is conveyed through the site.
- c) Demonstrate compliance with Council's AUS-SPEC ONE specifications and Water Management Policy, Policy no. PL 850
- d) Delineate the overland flow path through the subject property
- e) Ensure trees are not planted within the stormwater easement

Details demonstrating compliance with the above are to be submitted to Council's satisfaction, prior to activation of the Development Consent, within twelve months of determination.

Reason: To ensure adequate provision is made for stormwater drainage in a proper manner that protects adjoining properties.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within five (5) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

2. 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
02 Rev. H	August 2018	Platform Architects
03 Rev. H	August 2018	Platform Architects
04 Rev. H	August 2018	Platform Architects
05A Rev. H	August 2018	Platform Architects
05B Rev. H	August 2018	Platform Architects
06 Rev. H	August 2018	Platform Architects
07 Rev. H	August 2018	Platform Architects
08 Rev. H	August 2018	Platform Architects
09 Rev. H	August 2018	Platform Architects
10 Rev. H	August 2018	Platform Architects
11 Rev. H	August 2018	Platform Architects
Schedule of External Finishes Rev. B	March 2018	Platform Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Acoustic Assessment (Response to Council Letter)	17 August 2018	The Acoustic Group
Arboricultural Report (Final Version)	March 2018	Axiom Arbor Tree Services

BASIX Certificate No. 953744M_02	20 August 2018	Efficient Living Pty Ltd
Carpark Certification of Proposed Boarding House (Version 1B)	February 2018	ML Traffic Engineers
Flood Risk Management Report (Final Report)	8 March 2018	NB Consulting Engineers
Geotechnical Investigation (J1616)	8 March 2018	White Geotechnical Group
Plan of Management Rev. A	8 March 2018	Northern Beaches Essential Services Accommodation
Section J Report - NCC 2016	March 2018	Efficient Living
Traffic and Parking Impact Assessment (Version 1A)	January 2018	ML Traffic Engineers
Waterways Impacts Statement (Final)	8 March 2018	NB Consulting Engineers

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

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Sheet No. 1 of 3 Issue B	9 March 2018	Paul Scrivener Landscape Architect
Sheet No. 2 of 3 Issue C	9 March 2018	Paul Scrivener Landscape Architect
Sheet No. 3 of 3 Issue C	9 March 2018	Paul Scrivener Landscape Architect

Waste Management Plan		
Report No.	Dated	Prepared By
Waste Management Plan	February 2018	Platform Architects

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

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

3. Approved Land Use

Nothing in this consent shall authorise the use of site as detailed on the approved plans for any land use of the site beyond the definition of a Boarding House.

A Boarding house is defined as:

"boarding house:

(a) means any premises that:

(i) are wholly or partly let as a lodging for the purposes of providing the occupants with a principal place of residence, and

(ii) are used and occupied by at least 4 long term unrelated residents, and

(iii) include a communal living space used for eating and recreation, and

(iv) are not licensed to sell liquor, and

(b) does not include premises that have been subdivided or in which there is separate ownership of parts of the premises."

(development is defined by the Warringah Local Environment Plan 2000 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent. (DACPLB03)

4. Prescribed Conditions

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

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

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

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

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

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

Reason: Legislative Requirement (DACPLB09)

5. General Requirements

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

Demolition and excavation works are restricted to:

8.00 am to 5.00 pm Monday to Friday only.

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

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

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

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Council Contributions Plan 2018

The proposal is subject to the application of Council's Section 7.12 Development Contributions Plan.

The following monetary contributions are applicable:

Northern Beaches Council Contributions Plan 2018		
Contribution based on a total development cost of \$ 4,895,000.00		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$ 46,502.50
Section 7.12 Planning and Administration	0.05%	\$ 2,447.50
Total	1%	\$ 48,950.00

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

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

Reason: To provide for contributions in accordance with Northern Beaches Council Contributions Plan 2018.

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.

8. Construction, Excavation and Associated Works Bond (Road)

A Bond of \$20,000 as security against any damage or failure to complete the construction of road pavement/shoulder reconstruction works as part of this consent.

Reason: Protection of Council's Infrastructure

9. Construction, Excavation and Associated Works Bond (Drainage)

A Bond of \$25,000 as security against any damage or failure to complete the construction of Stormwater drainage works as part of this consent.

Reason: Protection of Council's Infrastructure

10. Construction, Excavation and Associated Works Bond (Crossing / Kerb)

A Bond of \$25,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter and any footpath works required as part of this consent. Reason: Biodiversity/Vegetation Conservation and Management

Reason: Protection of Council's Infrastructure

11. Construction, Excavation and Associated Works Bond (Maintenance for civil works)

The developer/applicant must lodge with Council a Maintenance Bond of \$3,000 for the construction of footpath, driveway, kerb and gutter, road shoulder and associated stormwater drainage works within the public roadway. The Maintenance Bond will only be refunded on completion of the six month Maintenance Period, if work has been completed in accordance with the approved plans and to the satisfaction of Council. The maintenance bond is to be apaid prior to Council issuing practical completion and may be exchanged for the works bond.

Reason: To ensure adequate protection of Council infrastructure

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

12. Application for Infrastructure Works on Council Roadway

Engineering plans are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The submission is to include four (4) copies of Civil Engineering plans for the design of the following (referred to as the "Works"):

- Construction of road shoulder and kerb and gutter along the full frontage of the site to provide for a 10 metre wide (kerb to kerb) road carriageway
- Construction of stormwater drainage pits and pipelines - pits must be constructed minimum 1 metre clear of the driveway layback
- Construction of 1.5 metre concrete footpath along the full frontage
- Construction of a 5.5 metre wide vehicle crossing
- Traffic Control Plan to be approved by Council's Transport Network Team

The Works are to be generally in accordance with the Development Application and Council's specification for engineering works – AUS-SPEC #1 and Council's Minor Works Specification.

The Fee Associated with the assessment and approval of the plans is to be in accordance with Council's Fees and Charges.

The developer/applicant must lodge with the Roads Authority the security bonds against any damage or failure to complete the construction of the Works as part of this consent is required.

The developer/applicant must lodge with the Roads Authority a Maintenance Bond for the construction of the Works. The Maintenance Bond will only be refunded on completion of the Maintenance Period, if work has been completed in accordance with the approved plans and to the satisfaction of the Roads Authority.

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

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

Reason: Ensure engineering works are constructed in accordance with relevant standards.

13. Shoring of Adjoining Property

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

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

14. Detailed Design of Stormwater Quality System

A certificate from a Civil Engineer, stating that the stormwater quality management system has been designed in accordance with the Stormwater Management Plans prepared by NB Consulting Engineers dated February 2018 Job No. 180203 and the Council's Water Management Policy.

The certificate shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment.

15. On Site Stormwater Detention Compliance Certificate

An On-site Stormwater Detention system must be designed and constructed in accordance with Council's current On-site Stormwater Detention Technical Specification, and generally in accordance with the concept drainage plans prepared by Northern Beaches Consulting Engineers, drawing number 180203, dated 20.02.2018.

The drainage plans must address the following:

- i. Stormwater discharge from the OSD tank is to be directed to a suitably designed stormwater dispersion system located at the north western corner of the site
- ii. Stormwater discharge is to be limited to the 1 in 5 year ARI, 0% fraction impervious stormwater runoff
- iii. Stormwater dispersion system is to be located minimum 3 metres from the downstream boundaries and is to be designed to ensure no scouring to downstream properties

Detailed drainage plans, including engineering certification confirming the above requirements have been satisfied and complying with Council's current On-site Stormwater Detention Technical 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 the disposal of stormwater and stormwater management arising from the development.

16. Boarding House Plan of Management

Prior to the issue of any Construction Certificate a Plan of Management is to be prepared for the premises to the satisfaction of the Certifying Authority. The plan shall include detail to manage the requirements detailed as follows:

- 1) The maximum number of boarders and lodgers
 - a) The building is to contain a maximum of 54 (fifty-four) persons (not including children under the age of 5 years), being no more than 2 (two) persons per designated bedroom.
 - b) The occupier of premises must not allow any room or cubicle in the premises to be used for the purposes of sleeping accommodation unless the room or cubicle has a floor area of 5.5 square metres or more for each person sleeping in it (in the case of long-term sleeping accommodation) or 2 square metres or more for each person sleeping in it (in any other case)

Note The Public Health Regulation 2012 provides that long-term sleeping accommodation means accommodation that is provided to the same person for a period of more than 28 consecutive days

- 2) The requirements detailed within Schedule 2 Part 1, Clauses 2 – 7 under the Local Government (General) Regulation 2005

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

Reason: To ensure the premises a maintained in an appropriate manner.

17. Structural adequacy

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.

Reason: Structural adequacy (DACNECPCC1)

18. Compliance with Standards

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

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

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

19. External Finishes to Roof

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

20. Sewer / Water Quickcheck

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

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

- Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- Or telephone 13 20 92.

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

21. Motorbike Parking

8 (eight) motorbike parking spaces shall be provided within the site and be designed in compliance with Australian Standards AS2890.1:2004.

Reason: Ensuring compliance with development.

22. Passing Bay

The passing bay proposed next to the access driveway shall be extended to the kerb providing a 5.5m wide access driveway and 5.5m wide passing bay for the first 6m of the driveway from the property boundary.

The proposed passing bay on the northern side of the site shall be improved by extending the passing bay and provision of a convex mirror improving the inter-visibility between vehicles exiting the car park and vehicles turning onto the ramp leading to the car park.

Reason: prevent conflict between opposing vehicles.

23. 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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**24. 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.

25. Tree protection

- (a) Existing trees which must be retained
 - i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
 - ii) Trees located on adjoining land
- (b) Tree protection
 - i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
 - ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.

- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DACLAD01)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

26. Progress Certification (Road & Subdivision)

Written certification is to be provided by a suitably qualified engineer upon completion and/or as and when requested by the Principal Certifying Authority for the following stages of works.

- (a) Silt and sediment control facilities
- (b) Laying of stormwater pipes and construction of pits (c) Proof Roll - AUSPEC Standard
- (d) Sub-grade trimmed and compacted **
- (e) Base-course laid and compacted **
- (f) Kerb and gutter construction
- (g) Pavement
- (h) Landscaping and vegetation
- (i) Clean-up of site, and of adjoining Council roadway and drainage system. (**To be tested by a recognised N.A.T.A. approved laboratory). Details demonstrating compliance are to be submitted to the Principal Certifying Authority.
- (j) All layers of the road formation are to be proof rolled to Council's satisfaction

Reason: To ensure compliance of civil works with Council's specification for engineering works

27. Stormwater Connection

Where connection to Council's nearest stormwater drainage system is required, the applicant shall connect the pipeline in accordance with Council's specification for engineering works and shall reconstruct all affected kerb and gutter, bitumen reinstatements, adjust all vehicular crossings for paths, grass verges and household stormwater connections to suit the kerb and gutter levels. All works shall be undertaken at the applicant's cost, and upon completion certified by an appropriately qualified and practicing Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure compliance of drainage works with Council's specification for engineering works.

28. Civil Works Supervision

All civil works approved in the Construction Certificate are to be supervised by an appropriately qualified and practising Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority

Reason: To ensure compliance of civil works with Council's specification for engineering works.

29. Notification of Inspections

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- (a) Installation of Silt and Sediment control devices
- (b) Prior to backfilling of pipelines
- (c) Prior to pouring of stormwater gully pits
- (d) Prior to pouring of kerb and gutter
- (e) Subgrade level / basecourse level / subbase
- (f) Sealing road pavement

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification. Council approval or acceptance of any stage of the work must be obtained in writing, and will only be issued after completion of the work to the satisfaction of Council and receipt of the required certification

Reason: To ensure new Council infrastructure is constructed to Council's requirements.

30. Traffic Control During Road Works

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety

31. 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.

32. Compliance with the Boarding House Plan of Management

The requirements of the Boarding House Plan of Management required by this consent is to be fully implemented in perpetuity from the issue of any interim / final occupation certificate.

Reason: To ensure the premises a maintained in an appropriate manner in perpetuity.

33. Trees Condition

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all

protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.
- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees. (DACLAEO3)

34. Protection of rock and sites of significance

- a) All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.
- b) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features (DACLAEOG1)

35. Aboriginal Heritage

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection. (DACAHE01)

36. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Sediment and Erosion Plan prepared by NB Consulting Engineers dated February 2018.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

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

37. Maintenance of Stormwater Quality System

The stormwater quality system must be maintained at all times in accordance with the Stormwater Quality Operation and Maintenance Plan, manufacturers specifications and as necessary to achieve the required stormwater quality targets for the development.

Reason: Protection of the receiving environment.

38. Stormwater Quality Operation and Maintenance Plan

An Operation and Maintenance Plan is to be prepared to ensure proposed stormwater quality system remain effective.

The Plan must contain the following:

- a) Maintenance schedule of all stormwater quality treatment devices
- b) Identification of maintenance and management responsibilities
- c) Maintenance requirements for establishment period
- d) Routine maintenance requirements
- e) Inspection and maintenance record and reporting
- f) Funding arrangements for the maintenance of all stormwater quality treatment devices
- g) Vegetation species list associated with each type of vegetated stormwater treatment device
- h) Waste management and disposal
- i) Traffic control measures (if required)
- j) Maintenance and emergency contact information
- k) Renewal, decommissioning and replacement timelines and activities of all stormwater quality treatment devices
- l) Work Health and Safety requirements

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

39. Works as Executed Drawings - Stormwater Quality System

Works as Executed Drawings for the stormwater quality system must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

40. Installation of Rainwater Tanks

Rainwater tanks shall comply with the following:

Be fitted with a first-flush device that causes initial rainwater run-off to bypass the tank and must drain to a landscaped area. The first flush device will not be permitted

to connect to the stormwater system
Have a sign affixed to the tank stating the contents is rainwater
Be constructed or installed in a manner that prevents mosquitoes breeding, such as the use of mesh to protect inlets and overflows
Have its overflow connected to an existing stormwater drainage system that does not discharge to an adjoining property, or cause a nuisance to adjoining owners
Pumping equipment must be housed in a soundproof enclosure
Where the rainwater tank is interconnected to a reticulated water supply, it must be installed in accordance with Plumbing Code of Australia, particularly backflow/cross connection prevention requirements.

A certificate from a licenced plumber shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: To conserve potable water.

41. Installation of Water Efficient Fittings

The following Water Efficiency Labelling and Standards (WELS) Scheme rated fittings must be installed:

- i. 4 star dual-flush toilets
- ii. 3 star showerheads
- iii. 4 star taps (for all taps other than bath outlets and garden taps)
- iv. 3 star urinals
- v. 3.5 star washing machines
- vi. 4 star dishwashers.

A certificate from a licenced plumber shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate demonstrating compliance with this condition.

Reason: To conserve potable water.

42. Authorisation of Legal Documentation Required for Onsite Detention and Overland Flowpath

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. On-Site Stormwater Detention Compliance Certification and Overland Flowpath

Upon completion of the on-site stormwater detention (OSD) system and overland flow channel/swale, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans.

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

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

44. 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 the 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 the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

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

Reason: To ensure the on-site detention and/or pump system is maintained to an appropriate operational standard.

45. Creation of Positive Covenant and Restriction as a User

A restriction on the use of land and a positive covenant shall be created on the title of the land in respect of the installation and maintenance of on-site stormwater disposal structures. The detailed information for a restriction on the use of land and a positive covenant is shown in Northern Beaches Council's WARRINGAH WATER MANAGEMENT POLICY PL850. The terms of the positive covenant and a Restriction on the use of land 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 the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

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

Reason: To ensure the on-site detention and/or pump system is maintained to an appropriate operational standard

46. Certification for the Installation of Stormwater Quality System

A certificate from a Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NER) shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate, stating that the stormwater quality management system has been installed in accordance with the Stormwater Management Plans prepared by NB Consulting Engineers dated February 2018 Job No. 180203 and Council's Water Management Policy.

The certificate shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment

47. Positive Covenant for Stormwater Quality System

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater quality system in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Quality Operation and Maintenance Plan.

The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Council), at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. The Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

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

Reason: To ensure ongoing maintenance of the on-site stormwater detention system

48. Registration of Encumbrances for Stormwater Quality System

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for stormwater quality system as to user is to be submitted.

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

Reason: To identify encumbrances on land

49. Restriction as to User for Stormwater Quality System

A restriction as to user shall be created on the title over the stormwater quality system, restricting any alteration to system. The terms of such restriction are to be prepared to Council's standard requirements, (available from Northern Beaches Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

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

Reason: To ensure modification to the on-site stormwater detention structure is not carried without Council's approval

50. Restriction as to User - Overland flowpath

A restriction as to user shall be created on the title over the overland flowpath, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction, are to be prepared by a registered surveyor to Northern Beaches Council's standard requirements at the applicant's expense. Northern Beaches Council shall be nominated as a 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 Occupation Certificate.

Reason: To ensure no modification of the overland flowpath without Council's approval.

51. Boarding House Plan of Management

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the operator that the requirements of the Boarding House Plan of Management have been implemented and are compliant.

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

Reason: To ensure the premises a maintained in an appropriate manner in perpetuity.

52. Noise

Prior to the issue of an Occupation Certificate a suitably qualified person shall certify that the acoustic treatments proposed in the development application, including the recommendations contained in the report by The Acoustic Group dated 17 August 2018 have been implemented and are compliant with the EPA Industrial Noise Policy.

Reason: To ensure noise to residents and neighbours complies with legislation.

53. Required Planting

Trees shall be planted in accordance with the following schedule:

Minimum No. of Trees Required.	Species	Location	Minimum Pot Size
All trees	As indicated on Landscape Plans Dwg Nos. 1B, 2C and 3C dated 09.03.2018 prepared by Paul Scrivener Landscape Architect	As indicated on the Landscape Plans	As indicated on the Landscape Plans

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

Reason: To maintain environmental amenity. (DACLAF01)

54. Post-Construction Dilapidation Survey - Stormwater and Road

A post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.pdf>

The post construction dilapidation report must be submitted to the Council for review and the Principal Certifying Authority prior to the issue of the Occupation Certificate. Any damaged to Council's stormwater infrastructure is to be rectified in accordance with Council's technical specifications prior to the release of the security bond.

Reason: Protection of Council's Infrastructure

55. Removal of All Temporary Structures/Material and Construction Rubbish

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

56. 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.

57. 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.

58. Construction of footpath, kerb and gutter

Footpath, kerb and guttering shall be constructed at cost of the applicant from its boundary with No.16 Wyatt Avenue connecting to the existing footpath, kerb and guttering outside No.12 Wyatt Avenue. The footpath, kerb and guttering shall be consistent with the existing and to comply with the Council's development engineers requirements.

Reason: Connectivity of the site to the existing footpath.

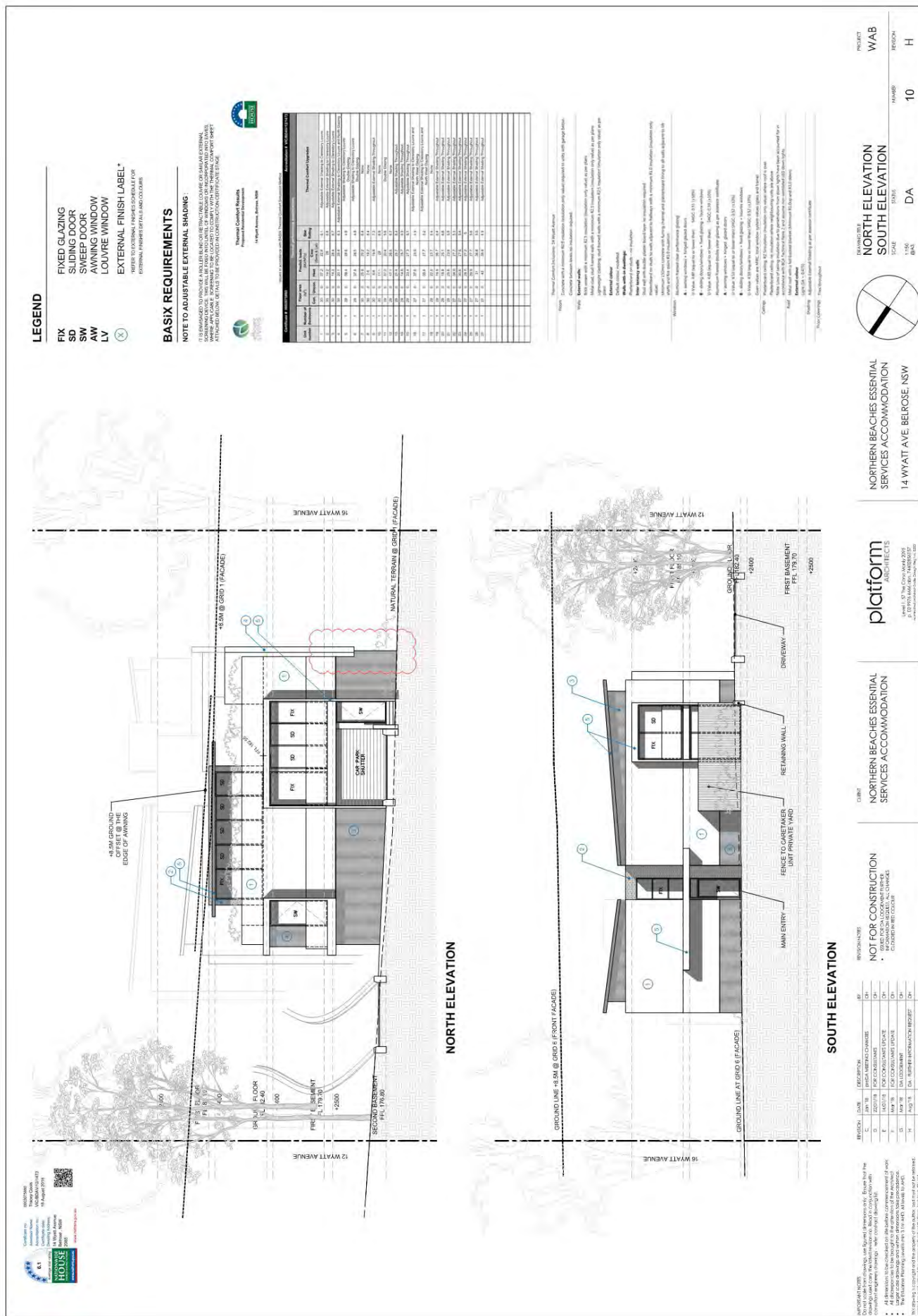
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

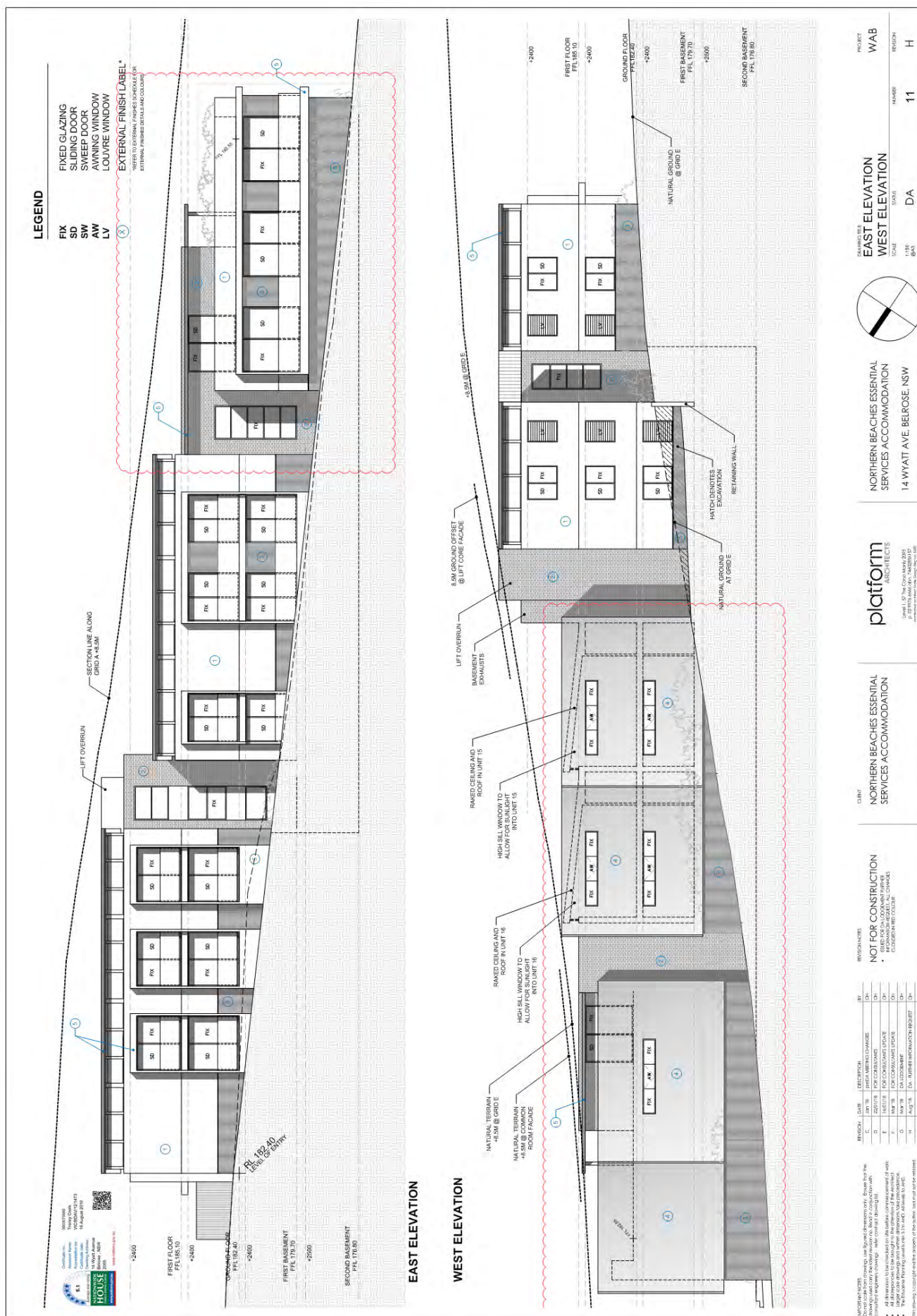
59. Landscape maintenance

- i) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.
- ii) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: To maintain local environmental amenity









STREET ELEVATION

STREET ELEVATION
PLEASE NOTE THAT PURPOSE OF THIS ELEVATION IS ONLY TO SHOW PROPORTIONS OF THE BUILDING AS SEEN FROM THE STREET. THE EXISTING BOUNDARY FENCE HAS NOT BEEN TAKEN INTO CONSIDERATION.

IMPORTANT NOTE: All dimensions to be checked on its before commencing work. All dimensions to be brought to the attention of the Architect. Large scale drawings and written dimensions take precedence. The Institute Planning (level 10) 3.1m and 4.1m to AHD.

REVISION	DATE	DESCRIPTION	BY
C	JAN '78	PRELIMINARY CHANGES	CH
D	22/01/78	FOR CONSULTANTS	CH
E	14/01/78	FOR CONSULTANTS UPDATE	CH
F	MAR '78	FOR CONSULTANTS UPDATE	CH
G	MAY '78	DA LAYOUT	CH
H	AUG '78	DA - SUPPLEMENT INFORMATION REQUEST	CH

NOT FOR CONSTRUCTION
ISSUED FOR INFORMATION PURPOSES
INFORMATION REQUEST, ALL CHANGES

NORTHERN BEACHES ESSENTIAL SERVICES ACCOMMODATION

platform

NORTHERN BEACHES ESSENTIAL
SERVICES ACCOMMODATION
14 WYATT AVE, BELROSE, NSW



STREET ELEVATION

SCALE	STATUS	NUMBER	REVISION
50	D	4	E