

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 1 AUGUST 2018

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



Peter Robinson
Executive Manager Development Assessment

Panel Members

Lesley Finn	Chair
Robert Hussey	Town Planner
Graham Brown	Town Planner
Lloyd Graham	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 1 August 2018
in the Council Chambers, Civic Centre, Dee Why
Commencing at 1.00PM**

1.0	APOLOGIES & DECLARATIONS OF PECUNIARY INTEREST	
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2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 18 JULY 2018

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 18 July 2018 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1	MOD2018/0194 - 74 WYUNA AVENUE, FRESHWATER - MODIFICATION OF DEVELOPMENT CONSENT DA2017/0356 GRANTED FOR THE CONSTRUCTION OF A SECONDARY DWELLING
REPORTING OFFICER	ANNA WILLIAMS
TRIM FILE REF	2018/463581
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the applicant/land owner is a relative of a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*.

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. MOD2018/0194 for Modification of Development Consent DA2017/0356 granted for the construction of a Secondary Dwelling at Lot 12 DP 8389, 74 Wyuna Avenue, Freshwater subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	MOD2018/0194
Assessment by:	Natalie Nolan, Nolan Planning Consultants (External Consultant)
Land to be developed (Address):	Lot 12 in DP 8389
Proposed Development:	Modification of Development Consent DA2017/0356 granted for the Construction of a Secondary Dwelling
Zoning:	WLEP 2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Lindsay Kelvin Warnes
Applicant:	Lindsay Kelvin Warnes
Application lodged:	17/04/18
Integrated Development	No
Designated Development	No
State Reporting Category	Residential – Secondary Dwelling
Notified:	10/05/2018 to 26/05/2018
Advertised:	Not Advertised in accordance with A.7 of WDCP
Submissions:	One
Recommendation:	Approval with conditions

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 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 provided by relevant Council / Government / Authority Officers on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan – B5 Side Boundary Setbacks

Warringah Development Control Plan - E1 Private Property Tree Management

SITE DESCRIPTION

Property Description:	Lot 12 in DP 8389
Detailed Site Description:	<p>The site is known as 74 Wyuna Avenue, Freshwater and has a legal description of Lot 12 in Deposited Plan 8389. The site is a rectangular shaped allotment, with a total area of 514.3m². The site has a slight cross fall west to east. The site has a frontage of 12.19m to Wyuna Avenue with the rear southern boundary having a frontage of 12.19m to Raffo Lane.</p> <p>The site is currently occupied by a two storey brick dwelling with tiled roof located on the northern portion of the site and orientated towards Wyuna Avenue. A detached fibro garage is located in the rear yard and fronts Raffo Lane. The garage is currently setback approximately 300mm from both the eastern side boundary and southern rear boundary.</p>

Map:



SITE HISTORY

Development Consent (DA2017/0356) was granted on 30 August 2017 for the construction of a secondary dwelling which included the following:

Ground Floor:

Demolish internals walls of the existing double garage.
Renew parts of existing double garage and replace garage door.
Construction of an addition to the existing double garage to create a kitchen / Living room for the secondary dwelling.

First Floor Addition:

Construction of two (2) bedrooms, bathroom, laundry and deck for the secondary dwelling.

It is noted that this consent retained the existing garage structure with alterations. This current modification seeks to demolish the existing garage and replace with a double garage in same location.

PROPOSED DEVELOPMENT IN DETAIL

This modification application lodged pursuant to Section 4.55 (1A) of the Environmental Planning and Assessment Act 1979 seeks modification to the approved development DA2017/0356.

The application seeks to amend the approved plans to allow for the demolition of the existing garage structure and replace with a new garage structure in the same location. The applicant indicates that the existing structure is not structurally adequate to support the proposed additions.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) – Modifications involving minimal environmental impact		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	Yes	The development as proposed is substantially the same as that already approved under DA2017/0356.

Section 4.55(1A) – Modifications involving minimal environmental impact		Comments
originally granted was modified (if at all), and		
(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, Warringah Local Environmental Plan 2011 and Warringah 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 “Public Exhibition” 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 79C '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 79C 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 enables the consent authority to seek additional information. 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>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>
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) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Local Environmental Plan 2011 and Warringah Development Control Plan sections in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) 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	No matters have arisen in this assessment that would justify

Section 79C 'Matters for Consideration'	Comments
interest	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 application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan.

As a result of the public exhibition process Council is in receipt of one submission from:

Name:	Address:
David Graham Yeomans	72 Wyuna Avenue FRESHWATER NSW 2096

The submission from Mr David Yeomans objected to the side setback of the garage structure and suggested that as the structure is proposed to be rebuilt, appropriate setbacks to the boundary should now be applied.

An assessment of the impact upon a nearby significant tree is provided under the Warringah LEP 2011 section of this report. The assessment provides that as the garage is now a new structure there is opportunity to ensure compliance with the current DCP controls and also ensure sufficient area for maintenance of the structure. A condition is included in the recommendations requiring the garage be setback 900mm from the eastern side boundary.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Review of the Modification Plans provided indicates that relocation of the Garage structure 900mm off the eastern boundary will require some minor excavation on the southern boundary to provide for the base slab beyond the existing slab. A portion of the slab will be above existing levels towards the north of the boundary based on levels provided on the Survey Plan.</p> <p>The works will be within the theoretical Tree Protection Zone (As calculated under AS4970-2009 Protection of trees on</p>

Internal Referral Body	Comments
	<p>development sites) of a mature <i>Corymbia citriodora</i> (Lemon Scented Gum) located on the south western corner of the site. The works are calculated to be outside of the theoretical Structural Root Zone of the tree.</p> <p>In view of the existing encroachment into the Tree Protection Zone by the existing Garage, the relocation of the reconstructed garage to provide a 900mm offset to the eastern boundary is considered to present acceptable impacts on the tree, subject to tree protection conditions as recommended.</p> <p>It is likely that some minor pruning of trees will be required to accommodate the proposed structure which is also considered acceptable subject to conditions as 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 (Affordable Rental Housing) 2009

The development remains consistent with the requirements of the SEPP ARH and the previous assessment undertaken in the parent application. There are no other SEPPs that apply to the subject modification application.

Warringah Local Environment Plan 2011

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

Principal Development Standards

No changes are proposed to the building envelope proposed.

Compliance Assessment

Clause	Compliance with Requirements
5.3 Development near zone boundaries	Yes
5.9 Preservation of trees or vegetation	Yes (See discussion below)
5.9AA Trees or vegetation not prescribed by development control plan	N/A
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Clause 5.9 Preservation of Trees

This clause requires Council's consent to the removal of trees. The objective of the clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.

The application has been referred to Council's landscape officer having regard to the condition recommending a setback of 900mm to the eastern side boundary. The Landscape Officer indicated that the relocation of the reconstructed garage to provide a 900mm offset to the eastern boundary is considered to present acceptable impacts on the tree, subject to tree protection conditions as recommended. The conditions prepared by the Landscape Officer are included in the recommendation.

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall Height	7.2m	6.6m	6.6m	Yes
B3 Side Boundary Envelope	5m	Minor encroachment to east	No change to approved encroachment.	No (See detailed assessment below)
B5 Side Boundary Setback	900mm	300mm to east 2.26m to west	300mm to east 2.26m to west	No (See detailed assessment below)
B7 Front Setback (Wyuna Ave)	6.5m	30.8m	30.8m	Yes
B7 Secondary Frontage Setbacks (Raffo Lane)	3.5m	1.46m to secondary dwelling 0m to garage	1.46m to secondary dwelling 0m to garage	No (See detailed assessment below)

D1 Landscaped Open Space	40% (205.72m ²)	32% (165.2m ²)	32% (165.2m ²)	No (See detailed assessment below)
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Note: a detailed assessment on all Built Form Controls under Part B of the WDCP 2011 is not required for the purpose of this application and modifications are only proposed to the front boundary setback.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
E1 Private Property Tree Management	Yes	Yes
E2 Prescribed Vegetation	N/A	N/A
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

The rear northeast corner of the upper level that encroaches the side boundary envelope. This application to modify the approved plans does not seek to alter the approved upper level.

B7 Secondary Setbacks

The proposed garage provides a secondary front setback to Raffo Lane of 0.3 metres. The proposed modification does not seek to alter the approved setback of 0.3m, however the modification provides for a new garage to replace the existing garage. As such an assessment of the of the modification is provided against the objectives as follows:

- **To create a sense of openness.**

The garage replaces the existing garage in the same location. Raffo Lane presents as a service lane and is characterised by high solid fencing and garage structures with minimal or

nil setbacks to the Raffo Lane frontage. There is no opportunity to increase the setback to Raffo Lane and the setback is consistent with the existing surrounding development.

- **To maintain the visual continuity and pattern of buildings and landscape elements.**

Raffo Lane is a narrow lane for access and is characterised by garage structures within the 3.5m secondary setback (many with minimal or nil boundary setback to Raffo Lane) and high solid fencing. The replacement garage with a reduced setback to Raffo Lane is considered to be consistent with the visual community established along Raffo Lane.

- **To protect and enhance the visual quality of streetscapes and public spaces.**

The replacement garage is compatible with the existing streetscape of Raffo Lane which is characterised by parking structures and some two storey structures with minimal setbacks to the street frontage.

- **To achieve reasonable view sharing.**

The proposed replacement garage will not have impact on existing views.

In summary the proposed replacement garage will be consistent with the objectives of this clause. There is no benefit to achieving compliance with the numerical requirements and it is not possible due to the location of the approved secondary dwelling. The setback proposed is consistent with the existing surrounding development and will not detract from the character of Raffo Lane.

B5 Side Boundary Setbacks

The proposed modification proposes to demolish the existing garage and replace with a new garage in the same location. The existing garage is provided with a setback of approximately 300mm to the eastern side boundary. As the proposed modification provides for a new garage an assessment of the modification is provided against the objectives as follows:

- **To provide opportunities for deep soil landscape areas.**

Comment: The proposed modification does not alter the approved deep soil landscaped area as the works are proposed in the location of the existing garage. As detailed below, it is recommended that a condition of consent be imposed requiring the new garage be setback 900mm from the eastern side boundary in accordance with the current DCP controls. This will have negligible impact on the deep soil landscaped area and appropriate conditions of consent have been recommended by Council's Landscape Officer.

- **To ensure that development does not become visually dominant.**

Comment: The proposal seeks to replace the existing garage (which the applicant indicates is structurally unable to support the additions). The recommendation includes a condition to setback the new structure 900mm from the eastern side boundary and will result in a development that is not visually dominant.

- **To ensure that the scale and bulk of buildings is minimised.**

Comment: The proposed modifications do not alter the approved bulk of the building. As discussed it is recommended that a condition of consent is imposed requiring a setback of

900mm to the eastern side boundary. This will improve the bulk and scale of the resulting development.

- **To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.**

Comment: The proposed modification does not alter the approved built form but rather provides to replace the existing garage with a like structure. However, as the garage is now a new structure it is considered appropriate to require a side boundary setback compliant with the current DCP. Therefore, a condition of consent is recommended that the garage structure be setback 900mm to the eastern side boundary. This setback will ensure appropriate visual separation whilst also allowing for construction and maintenance of this structure without requiring access to the adjoining property. It is considered that a new structure should ensure compliance with the setback control.

- **To provide reasonable sharing of views to and from public and private properties.**

Comment: There is no significant views affected.

The clause provides for some exceptions to the side boundary setback requirement, with the following being relevant:

Ancillary to a dwelling house:

- *Consent may be granted to allow a single storey outbuilding, carport, pergola or the like that to a minor extent does not comply with the requirements of this clause.*

The proposed garage forms part of an approved two storey structure. As the existing garage is structurally unable to support the approved works it is now proposed to demolish the existing garage and construct a new garage in its place. It is recommended that the new garage be brought into compliance with the current DCP side setback controls which will also ensure adequate maintenance of the structure. A condition of consent is imposed requiring a setback of 900mm to the eastern side boundary. This is justified as the resultant structure is two storey and the increased setback will improve amenity without unreasonably impacting on the approved structure. The increased setback will require the approved door on the southern elevation to be relocated, however there is ample access on the western elevation and this area is screened by a privacy screen and there will be not be any unreasonable impact on the adjoining property. For these reasons it is not considered that a variation to the side boundary setback control is justified in this instance and a condition of consent is included in the recommendation requiring a setback of 900mm to the eastern side boundary from the garage structure.

D1 Landscaped Open Space

The approved development provided for a Landscaped Open Space of 32% of the site. The proposed modification does not seek to alter the approved Landscaped Open Space. As such there is no reduction to the landscaped open space. Notwithstanding, the proposed modification is considered against the underlying Objectives of the Control as follows:

- **To enable planting to maintain and enhance the streetscape.**

The proposed modification does not reduce the approved landscaped open space and does not result in the removal of any existing plantings. Therefore, planting will be enabled for the purpose of maintaining and enhancing the streetscape.

- **To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.**

The proposed modification does not remove any vegetation nor reduce the existing landscaped area. The existing trees adjacent to the Raffo Lane frontage are to be retained. It is therefore considered that the works will ensure conservation and enhancement of indigenous vegetation, topographical features and habitat for wildlife.

- **To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.**

The proposed modifications do not alter the approved landscaped open space and it is suitable for establishment of low lying shrubs, medium high shrubs and canopy trees.

- **To enhance privacy between buildings.**

The proposed modifications to provide for a new garage will not have any impact on the privacy of the adjoining properties.

- **To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.**

The proposal as approved provided for sufficient dimensions of open space between the primary and proposed secondary dwelling to adequately accommodate for the outdoor recreational needs of the occupants. The proposed modification does not alter or reduce the private open space.

- **To provide space for service functions, including clothes drying.**

The site will retain satisfactory space for service functions, including clothes drying. The proposed modifications do not alter the existing service functions.

- **To facilitate water management, including on-site detention and infiltration of stormwater.**

The proposed modifications do not increase hard surface area and the site will adequately facilitate water management.

In conclusion the proposed modification does not reduce the approved landscaped open space and the proposal as modified will continue to achieve the objectives of this clause.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in

section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance, subject to the recommended conditions.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

Section 94 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the 4.55(1A) Modification Application assessed having regard to all documentation submitted by the applicant and the provisions of:

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

This assessment has taken into consideration the submitted plans and 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 modification to the development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority approve Modification Application No. Mod2018/0194 for Modification of Development Consent DA2017/0356 granted for construction of a secondary dwelling on land at Lot 12 DP 8389, 74 Wyuna Avenue, Freshwater, subject to the conditions printed below:

A. Add Condition No.3A - 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:

Architectural Plans – Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Drawing No. 04/16, pg1/5, Issue G, Site Plan	12/04/18	JB Design Studio
Drawing No. 04/16, pg2/5, Issue G, Ground Floor Plan	12/04/18	JB Design Studio
Drawing No. 04/16, pg3/5, Issue G, First Floor Plan	12/04/18	JB Design Studio
Drawing No. 04/16, pg4/5, Issue G, Section A, South and North Elevations	12/04/18	JB Design Studio
Drawing No. 04/16, pg5/5, Issue G, East and West Elevation	12/04/18	JB Design Studio

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

B. Add Condition No.4a – Required Setback:

The plans shall be amended to provide a setback of 900mm from the garage to the eastern side boundary.

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

Reason: To ensure development minimises unreasonable impacts in accordance with WLEP2011 and WDCP.

C. Add Condition No. 17a - Tree Protection and Pruning

Tree protection and pruning

(a) Existing trees which must be retained

All not indicated for removal on the approved plans, unless exempt or noxious in the relevant planning instruments

(b) Tree protection and pruning

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 protection measures, including fencing, are to be in place prior to commencement of works
- v) Tree pruning within the subject site is approved to enable construction in accordance with the approved plans.
- vi) Tree pruning is not to exceed 15% of any existing tree canopy
- vii) All tree pruning to be in accordance with AS4373-2007 Pruning of amenity trees.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DACLAC01)

D. Add Condition No. 17b - Trees

During Construction 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:

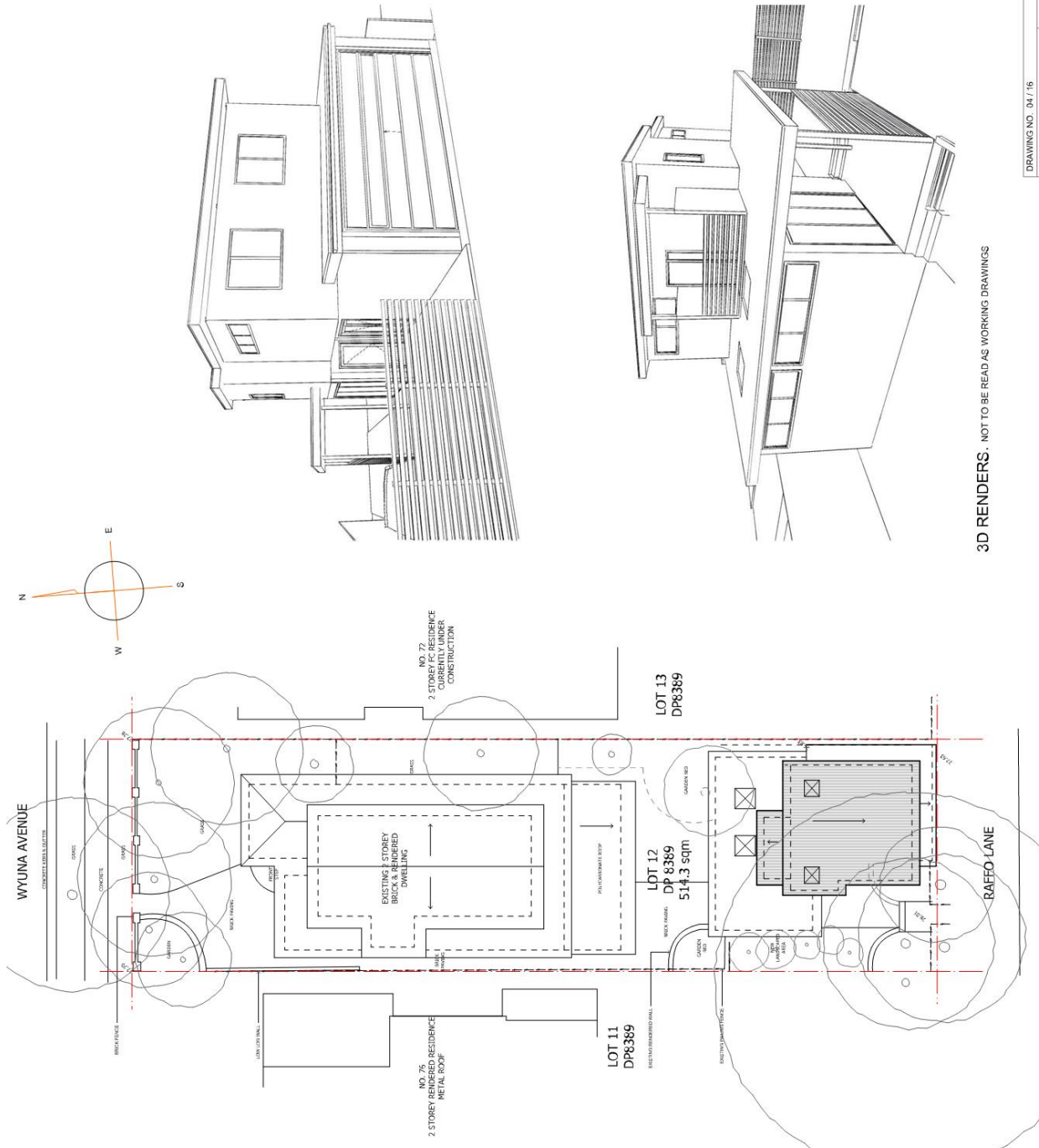
- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a 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.

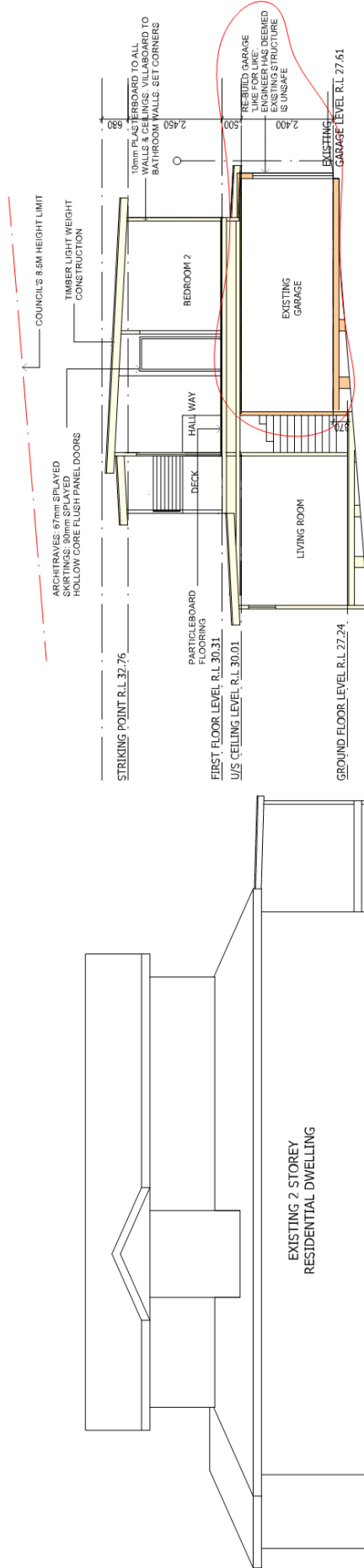
LEGEND & GENERAL NOTES	
VAR.	VARIATION
O.T.A.	OWNER TO ADVISE BUILDER
50PP	90 x 90 PRIMED TIMBER POST
50SP	90 x 90 STEEL POST
S.L.	SKY LIGHT
C.O.S.	TO BE CHECKED ON SITE
OPT.	OPTION
<p>ALL WORK IS TO COMPLY WITH THE BUILDING CODE OF AUSTRALIA AND ALL RELEVANT STANDARDS BY THE STANDARDS ASSOCIATION OF AUSTRALIA.</p> <p>ALL LANDSCAPING ARE SUBJECT TO AMENDMENT AFTER A CHECK MEASURE ON SITE. ANY DISCREPANCIES ARE TO BE REPORTED TO THE DESIGN STUDIO PRIOR TO CONSTRUCTION.</p> <p>BUILDERS TO ENSURE THAT ALL CONSTRUCTION LEVELS MARKED ON PLAN AND ENGINEERING PLANS ARE STRICTLY COMPLIED WITH.</p> <p>BASIS REQUIREMENTS</p> <ul style="list-style-type: none"> 40% NEW LIGHTING TO BE FLUORESCENT, COMPACT ALL LIGHT FIXTURES TO BE 3 STAR OR GREATER WATER RATING. EXTERNAL WALL TO HAVE R1.70 OR GREATER INSULATION CEILING TO HAVE R0.45 FOIL BACKED BLANKET (100mm) OR GREATER ALL WINDOWS W1, W4, W5, D1, W6 & D3 TO HAVE PYROLYTIC LOW-E GLASS 	
WINDOW SCHEDULE	GLASS TYPE
W1	CMW2005000
W2	CMW2126
W3	CMW200400
W4	CMW2125
W5	CMW2125
W6	CMW200400
W7	CMW1007
D1	CMW2127
W8	CMW2124
W9	CMW2106
D3	CMW2121
<p>FRAMING NOTES:</p> <p>ROOF PITCH 3° ROOF</p> <p>FRAME HEIGHT 2450mm</p> <p>EAVE OVERHANGS 600mm</p> <p>EXTERNAL DOOR AND WINDOW HEAD HEIGHT 2130mm TO LINE UP</p> <p>INTERNAL DOOR 2110mm</p> <p>DOOR AND WINDOW 50mm MIN UNLESS OTHERWISE NOTED</p> <p>RIC HEAD HEIGHT AS HIGH AS POSSIBLE</p> <p>FRAME AND TRUSS CENTRE 600mm</p> <p>DOOR STUD OPENINGS 800mm WIDE UNLESS OTHERWISE NOTED</p>	
COUNCIL CALCULATIONS	
SITE AREA	514.3sqm
EXISTING IMPERVIOUS AREA	362.2sqm
NEW IMPERVIOUS AREA	346.1sqm
EXISTING SITE COVERAGE	70%
PROPOSED SITE COVERAGE	67%
EXISTING LANDSCAPING	17.2sqm
PROPOSED LANDSCAPING	17.2sqm
PROPOSED LANDSCAPING TO INCREASE BY 6%	



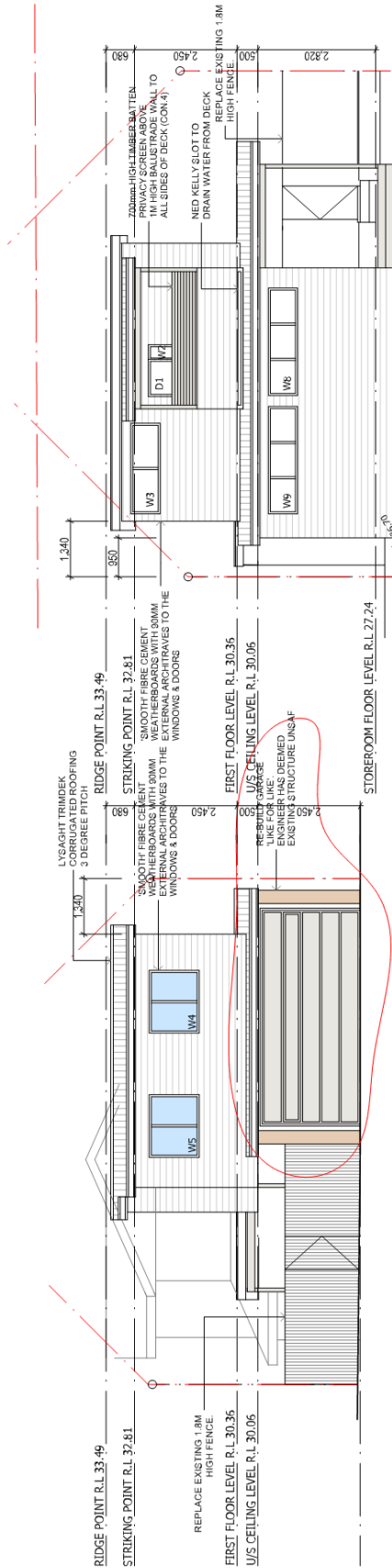
3D RENDERS. NOT TO BE READ AS WORKING DRAWINGS

SITE PLAN
1:200

DRAWING NO. 04/16	Pg No. 1 / 5	NO. REVISION	DATE	BY
<p>jb design studio www.jbdesignstudio.com.au 0421 517 351 0411 363 326</p> <p>Project: Garage and Granny Flat at 74 Wyuna Ave, Freshwater</p> <p>Client: Wames Title Scale 1:100</p> <p>Wames 74 Wyuna Ave, Freshwater Date 06-2-15</p>				
<p>Legend: G BSC JES Modification F FOR C2C E Amended Plans D DA PLANS G Approved Design B Unapproved Plans for Council A Plans for Council</p>				
<p>Revisions: 15/03/16 MB 11/03/16 MB 06/04/17 MB 11/03/17 MB 01/02/17 MB 15/03/16 MB</p>				

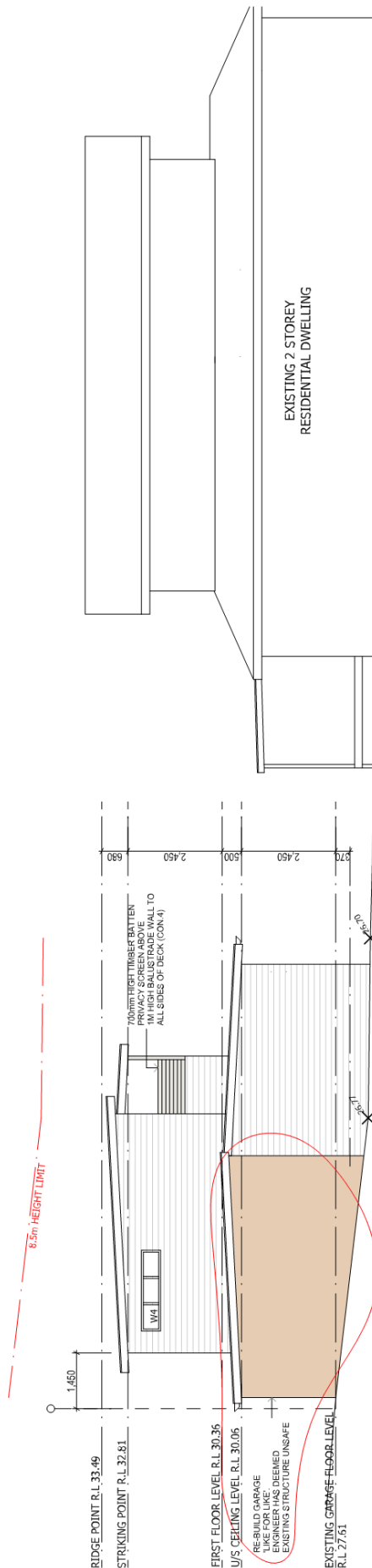


SECTION A

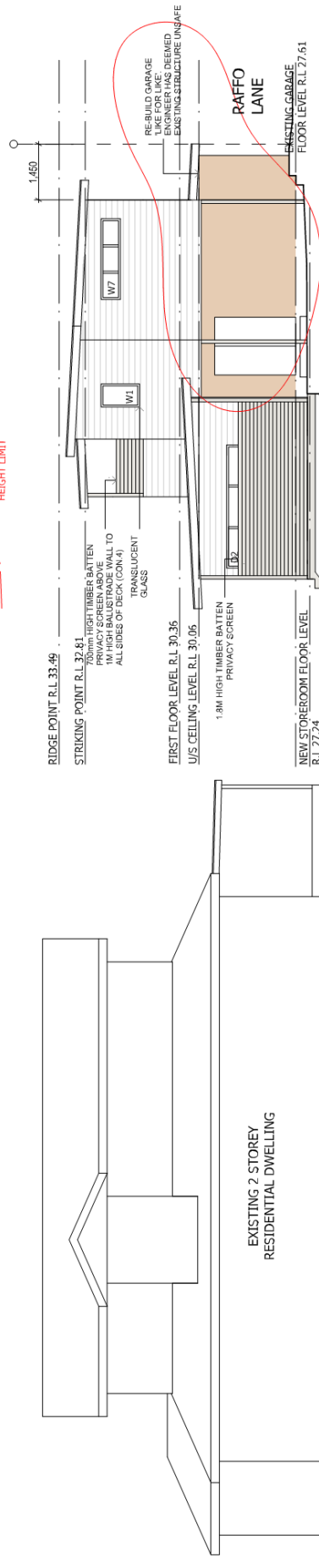


SOUTH ELEVATION

G	SEC 1.65 Modification	09/04/18	MB	DATE	BY
F	FOR C2	01/02/17	MB		
E	Amended Plans	11/08/17	MB		
D	DA PLANS	06/04/17	MB		
C	Amended Plans	11/03/16	MB		
B	Unrelated Plans for Council	15/03/16	MB		
A	Plans for Council				
Pg No.	4 / 5	NO	REVISION		
DRAWING NO.	04 / 16				
Project	Garage and Genny Flat at 74 Wynne Ave, Freshwater				
Client	Wynnes				
Title	74 Wynne Ave, Freshwater				
Scale	1 : 100				
Date	06-2-15				



EAST ELEVATION



WEST ELEVATION

G	SEC 4.65 Modification	09/04/18	MB	DATE	BY
F	FOR C2C	01/02/17	MB		
E	Amended Plans	11/08/17	MB		
D	DA PLANS	06/04/17	MB		
C	Amended Plans	11/03/17	MB		
B	Unsealed Plans for Council	11/03/16	MB		
A	Plans for Council	15/03/16	MB		

DRAWING NO.	04 / 16	Pg No.	5 / 5	NO	REVISION	DATE	BY
Project	Garage and Gerny Flat at 74 Wynne Ave, Freshwater	Client	Waness				
	www.jbdesignstudio.com.au	Title	74 Wynne Ave, Freshwater				
	0421 517 351, 0411 363 328	Scale	1 : 100				
			Date	06-2-15			

ITEM 3.2	DA2017/1304 - 23-25 LAUDERDALE AVENUE, FAIRLIGHT - DEMOLITION WORKS AND CONSTRUCTION OF 4 ATTACHED DWELLINGS AND 4 LOT TORRENS TITLE SUBDIVISION
REPORTING OFFICER	RODNEY PIGGOTT
TRIM FILE REF	2018/463534
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2017/1304 for demolition works and construction of 4 attached dwellings and 4 lot Torrens title subdivision at Lot 1 DP 1087552 and Lot 1 DP 168846, 23-25 Lauderdale Avenue, Fairlight subject to the conditions and for the reasons set out in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2017/1304
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 1 DP 1087552, 25 Lauderdale Avenue FAIRLIGHT NSW 2094 Lot 1 DP 168846, 23 Lauderdale Avenue FAIRLIGHT NSW 2094
Proposed Development:	Demolition works and construction of 4 attached dwellings and 4 lot torrens title subdivision
Zoning:	Manly LEP2013 - Land zoned R1 General Residential Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Ann Maree Hreszczuk
Applicant:	Ewhen Hreszczuk Ann Maree Hreszczuk
Application lodged:	20/12/2017
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	12/01/2018 to 30/01/2018
Advertised:	13/01/2018
Submissions Received:	3
Recommendation:	Approval
Estimated Cost of Works:	\$ 3,500,481.00

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 - 4.1 Minimum subdivision lot size
 Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	<p>Lot 1 DP 1087552 , 25 Lauderdale Avenue FAIRLIGHT NSW 2094</p> <p>Lot 1 DP 168846 , 23 Lauderdale Avenue FAIRLIGHT NSW 2094</p>
Detailed Site Description:	<p>The subject site consists of 2 allotments located on the southern side of Lauderdale Avenue.</p> <p>The two lots form an irregular shape with a frontage of 11.885m along Bollingbroke Parade, 24.595m along Lauderdale Avenue and 44.925m along Arlington Drive.</p> <p>The sites currently have a surveyed area of 472.6mm² at 23 Lauderdale Avenue and 454.6m² at 25 Lauderdale Avenue.</p> <p>The site is located within the R1 General Residential zone and currently accommodates a 1-2 storey dwelling on each site.</p> <p>The site has a slope of 1- 2 metres from Bollingbroke Parade down to Arlington Drive.</p> <p>Each site has exiting vegetation scattered across the properties.</p> <p>Detailed Description of Adjoining/Surrounding</p>



Development

Adjoining and surrounding development is characterised by a mix of residential dwellings and flat buildings.

Map:



SITE HISTORY

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

- DA5240/92- Alterations and additions determined by Council on 6 April, 1992. (23 Lauderdale Avenue, Fairlight.)

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for demolition of the existing dwellings and construction of four attached dwellings with 4 lots subdivided under Torrens title subdivision along with landscaping and fencing. The proposed works for each proposed lot is as follows:

Lot 1

- Double garage and storage at lower level
- Ground floor with master bedrooms, 2 bedrooms, bathroom, laundry, and rear balcony (with planter box)
- Front entry and deck area.
- Rear balcony
- First floor with living, dining, kitchen and lounge area
- Powder room at first

Lot 2

DA2017/1304

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- Double garage and storage at lower level
- Ground floor with master bedrooms, 2 bedrooms, bathroom, laundry, and rear balcony (with planter box)
- Front balcony at first floor and rear balcony
- First floor with living, dining and kitchen area
- Powder room at first floor

Lot 3

- Double garage and storage at lower level
- Ground floor with master bedrooms, 2 bedrooms, bathroom, laundry, and rear balcony (with planter box)
- Front balcony at first floor and rear balcony
- First floor with living dining and kitchen
- Powder room at first floor

Lot 4

- Double garage and storage at lower level
- Ground floor with master bedrooms, 2 bedrooms, bathroom, laundry, and rear balcony (with planter box)
- Front balcony at first floor and rear balcony
- First floor with living dining and kitchen
- Powder room at first floor

Revised plans were submitted on the 22nd of May 2018 which include the following changes to the plans:

- Reduced extent of first floor balcony to Unit 4 at southern elevation.
- Removal of planter box to southern elevation of unit 4.

These plans differed only in minor respects but were re-notified to the neighbouring property that is adjacent to where the above amendments were made. This is consistent with the requirements for notification under Part 2 of the Manly DCP.

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 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.



Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, 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>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 79C (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 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 economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.



Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Mr Timothy Guerin Bannigan	14 Bolingbroke Parade FAIRLIGHT NSW 2094
Mr Mark De Teliga	6 / 6 Fairlight Crescent FAIRLIGHT NSW 2094
Mrs Susan Jane Bannigan	14 Bolingbroke Parade FAIRLIGHT NSW 2094

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

- Non-compliance with minimum lot size, not following existing subdivision pattern.
- Non-compliance with Floor Space Ratio
- Non-compliance with maximum wall height, non-compliance with number of storeys, non-compliance with side and rear setback, non-compliance with overshadowing, non-compliance with privacy
- Concern for view loss and application does not adequately address potential view loss.
- Loss of amenity through overall bulk particularly in relation to impact on sunlight as a result of proposed Unit 4. Also it would provide an "overbearing nature and sense of enclosure".
- Uncertainty about proposed boundary fence height.
- Arlington drive is main access and egress used for construction and this will cause danger to pedestrian and vehicular traffic. Concern is also raised that additional traffic will cause problems with access, request for a footpath and protective fencing. Concern for noise during construction.
- Concern for parking.
- Concerns for privacy between proposed balconies at Arlington Drive in relation to opposite residences at Fairlight Crescent. It is noted that balconies were not supported at 6 Fairlight Crescent as a result of not being in keeping with the Streetscape and that this also applies in this situation.
- Concern for noise during construction
- Placement of rubbish bins
- Overshadowing to apartments opposite at 6 Fairlight Crescent.
- Overdevelopment

The matters raised within the submissions are addressed as follows:

- Non-compliance with minimum lot size, not following existing subdivision pattern.



Comment:

An assessment of minimum lot size has been made in this report and found the proposal to be reasonable. This includes the consideration of a Clause 4.6 application.

- Non-compliance with Floor Space Ratio

Comment:

An assessment of Floor space ratio has been made in this report and found the proposal to be reasonable. This includes the consideration of a Clause 4.6 application.

- Non-compliance with maximum wall height, non-compliance with number of storeys, non-compliance with side and rear setback, non-compliance with overshadowing, non-compliance with privacy

Comment:

An assessment of these issues including non-compliance with numerical controls has been made under the Manly DCP section of this report. This assessment has found the proposal to be reasonable.

- Concern for view loss and application does not adequately address potential view loss.

Comment:

An assessment of views has been made under this report including consideration of the court established principle for views. This has found the proposal to reasonably minimise disruption of views and provide for adequate view sharing.

- Loss of amenity through overall bulk particularly in relation to impact on sunlight as a result of proposed Unit 4. Also it would provide an "overbearing nature and sense of enclosure".

Comment:

An assessment of bulk and impact on sunlight has been made in this report and found the proposal to be reasonable.

- Uncertainty about proposed boundary fence height.

Comment:

The revised elevations plan (June 1), Southwest Elevation, shows the extent of the existing paling fence and provides for a new paling fence at the rear to match the height of this existing fence

- Arlington drive is main access and egress used for construction and this will cause danger to pedestrian and vehicular traffic. Concern is also raised that additional traffic will cause problems with access, request for a footpath and protective fencing. Concern for noise during construction

Comment:

Conditions have been imposed to ensure adequate controls and safety during construction.

- Concern for parking.

Comment:

An assessment of car Parking has been made under the Manly DCP section of this report. This assessment has found the proposal to be reasonable.

- Concerns for privacy between proposed balconies at Arlington Drive in relation to opposite



residences at Fairlight Crescent. It is noted that balconies were not supported at 6 Fairlight Crescent as a result of not being in keeping with the Streetscape and that this also applies in this situation.

Comment:

An assessment of privacy and setback to the streetscape has been made under the Manly DCP section of this report. This assessment has found the proposal to be reasonable due to sufficient physical separation and appropriate presentation of bulk.

- Placement of rubbish bins

Comment:

Conditions have been imposed relating to rubbish bins.

- Overshadowing.

Comment:

An assessment of overshadowing for surrounding dwellings has been made under the Manly DCP in this report and found the proposal to be reasonable.

- Overdevelopment

Comment:

An assessment of the proposal against the Manly LEP and Manly DCP has found the extent of the development to be reasonable.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The landscape proposal is acceptable subject to provision of additional landscaping.
NECC (Development Engineering)	Development Engineer has no objection to the application subject to the following conditions of consent.
Traffic Engineer	I have reviewed the submitted plans and traffic impact assessment and raise no objections to approval of this DA subject to the following conditions
Waste Officer	Council's Waste officer provided that the proposal was acceptable, subject to conditions.

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



ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 888671M dated 19 December 2017).

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

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

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

SEPP (Infrastructure) 2007

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).



- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size	250m ²	Proposed Lot 4 - 255.5m ²	-	Yes
		Proposed Lot 3 - 214.8m ²	14.1% (35.2m ²)	No
		Proposed Lot 2 - 208.7m ²	16.5% (41.3m ²)	No
		Proposed Lot 1 - 248.2m ²	0.72% (1.8m ²)	No
Height of Buildings	8.5m	8.5m	N/A	Yes
Floor Space Ratio	0.6:1	Proposed Lot 4 - 0.56:1	-	Yes
		Proposed Lot 3 - 0.70:1 (149.4m ²)	16% (20.5m ²)	No
		Proposed Lot 2 - 0.72:1 (149.4m ²)	19.3% (24.2m ²)	No
		Proposed Lot 1 - 0.69:1 (171.7m ²)	15.3% (22.8m ²)	No

Compliance Assessment

Clause	Compliance with Requirements
4.1 Minimum subdivision lot size	No
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes



Clause	Compliance with Requirements
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.1 Minimum subdivision lot size

See comments under Clause 4.6.

4.4 Floor space ratio

See Clause 4.6 comments.

4.6 Exceptions to development standards

Minimum Lot Size

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size development standard has taken into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement:	250m ²
Proposed:	Lot 1: 248.2m ² Lot 2: 208.7m ² Lot 3: 214.8m ² Lot 4: 255.5m ²
Is the planning control in question a development standard?	YES
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	Lot 1: 0.72% (1.8m ²) Lot 2: 16.5% (41.3m ²) Lot 3: 14.1% (35.2m ²) Lot 4: Compliant.

The proposal must satisfy the objectives of Clause 4.1 - Minimum subdivision lot size, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Minimum subdivision lot size limitation pursuant to Clause 4.1 of the MLEP 2013 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.1 – 'Minimum subdivision lot size' of the MLEP 2013 are:



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

(a) to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping,

Comment:

The combination of the two lots at 23 Lauderdale Avenue and 25 Lauderdale Avenue form an end of street corner allotment which has a boundary to three streets. The proposed subdivision would result in three lots with a front boundary to Bollingbroke Parade (and Lauderdale Avenue for Lot 2) and rear boundary to Arlington Drive as well as a corner allotment to Lauderdale Avenue and Arlington Drive. This has the effect of providing 3 new lots which are similar in type to the 7 adjacent properties from 2 Bollingbroke Parade to 14 Bollingbroke Parade and 1 new corner lot which is similar in type to the corner lots on the opposite sides of the road at 2 Farilight Crescent and 19 Bollingbroke Parade (see images below). This corner lot has a minor non-compliance of 0.72% (1.8m²) which provides a reasonable size to maintain the pattern of corner allotments. The other lots are relatively long and narrow which is similar to the properties from 2-14 Bollingbroke Parade, with the exception of the splayed frontage of Lot 2 to Lauderdale Avenue to allow additional space for landscaped area. This pattern with an integration of a compliant amount of landscaped area in accordance with the Manly DCP, 2013 provides appropriate lots for a sufficient and usable area.



Figure 1: The existing subject sites and surrounding subdivision pattern.

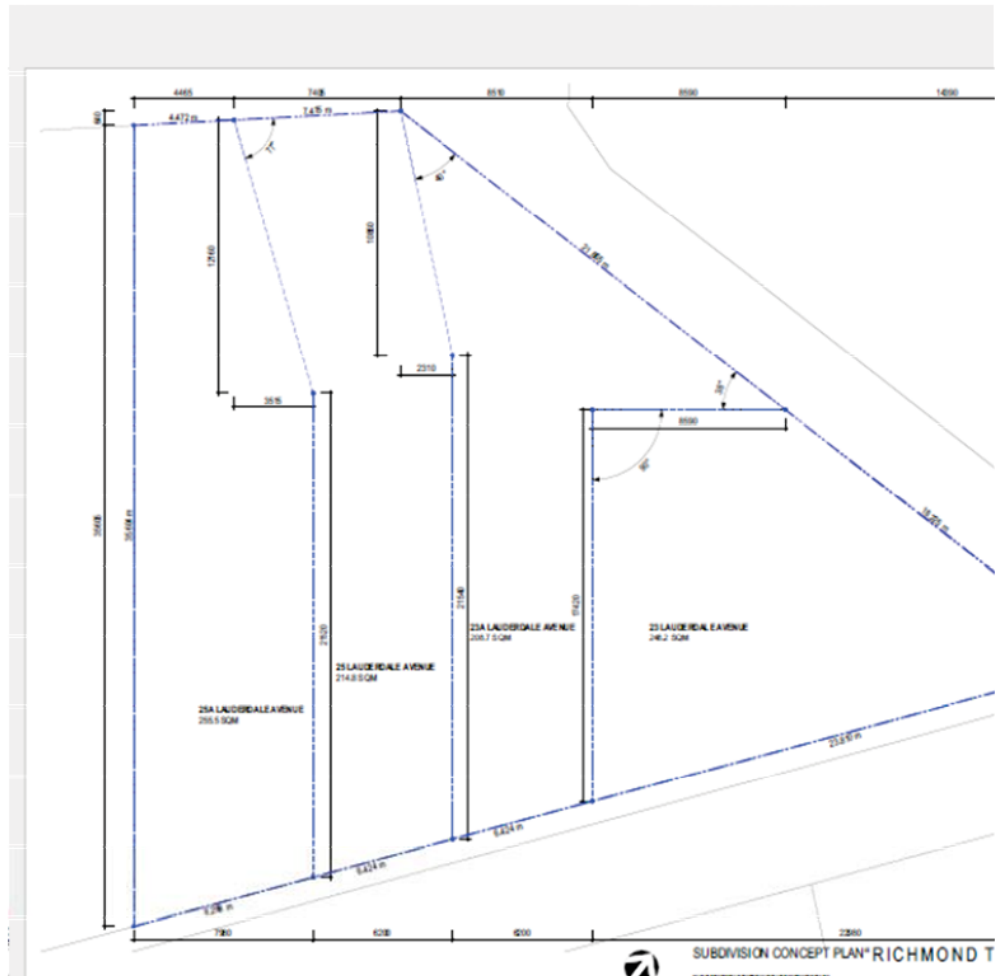


Figure 2: The proposed subdivision pattern.

(b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns.

Comment:

As explained above, the provision of a corner allotment as well as three of the allotments with two street frontages would reasonably complement the prevailing subdivision pattern. This ensures that the proposed development on these lots can adequately fit into the character of the locality and streetscape.

(c) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,

Comment:

The subject site is a reasonable distance from the foreshore so that the non-compliant lots would not have any unreasonable impact on public or private views as further explained under the *Manly DCP- Maintenance of Views* section of this report. In addition, the proposal provides a



compliant landscaped area for each lot and proposes vegetation similar to the existing circumstance which shows that the subdivision would not have an unreasonable impact on the above values in this situation.

(d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.

Comment:

The subject site is located on Lauderdale Avenue and close to the Manly Town Centre. In this area, there is reasonable access to the above.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R1- General Residential zone.

The underlying objectives of the R1 General Residential zone:

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

Comment:

The proposal provides four attached dwellings that will contribute to providing housing for the community.

It is considered that the development satisfies this objective.

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

Comment:

The proposed four attached dwellings would contribute to the variety of development types in the area.

It is considered that the development satisfies this objective.

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

Comment:

Not applicable.

It is considered that the development satisfies this objective.

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

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



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

Comment:

The proposed subdivision would result in a pattern that is consistent with the surroundings and locality as well as reasonably developable area on each site (for the proposed dwellings) whilst providing additional dwellings to meet the housing needs of the community.

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

Comment:

The proposed subdivision would result in a pattern that maintains consistency with the surrounding lots, has no unreasonable amenity impact and provides opportunity for a greater number of dwellings to contribute to housing needs of the community.

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

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

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

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

Comment:

The following is from the written request submitted to and considered by Council:

"It is considered that the variations to the applicable standard in relation to the proposed development, satisfies the objectives of this Clause, in that the sizes of the proposed allotments are capable of providing a useable area for building and landscaping and providing living area of between 145 m² and 169 m².

In addition it is considered that the bulk and scale of the new dwelling is similar, if not the same as, other dwellings in this locality, ensuring maintenance of the contextual, visual and landscaping relationships with adjoining development, and the streetscape in which the proposed development is to be sited.

As discussed previously in this report, there will be no adverse environmental impacts in relation to the use or enjoyment of adjoining land and the public domain.

Further to the above, and as also indicated previously in the report, the character of the locality will not be adversely impacted by the proposed decrease in the minimum size of allotment, and there are no existing vegetation, topography, public views and natural



features of land, including the foreshore, which would limit the development, or require larger areas than that proposed as proposed in this application

Similarly the compatibility of the building form to the size of the land will continue to be maintained.

The potential impacts on solar access, privacy, and overshadowing have all been addressed previously in this report, and it can be concluded that the variation of the minimum allotment size in this instance, will have no adverse impacts on adjoining properties.

It can therefore be concluded that the variation in the minimum allotment size, will continue to acknowledge the environmental constraints of the site, and will not inhibit the contextual relationship between the subject land and that of adjoining residential development.

In terms of the relevant objectives of the Environmental Planning and Assessment Act, it is considered that the variation in the minimum size of allotment, will not have any adverse impact on the environmental constraints of the site, as addressed in this planning report, and in fact will contribute towards maintaining and enhancing the residential character of the locality.

In addition approval of the development will ensure the enhancement of the existing zoning in this locality, as well as the orderly and economic use of that land.

It is also important to note that based on a density of 1 unit per 250m², the site when viewed as a whole, has an area of 927 m². That is only a deficiency of 73 m², or 6%, to be consistent with Council's minimum allotment size requirements.

It can therefore be concluded that the variation to the minimum allotment size, is consistent with the relevant objects of the Act, which are as follows;

To encourage:

(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,

(ii) the promotion and co-ordination of the orderly and economic use and development of land.

Further to the above, Preston J has expressed the view that there are five different ways in which an objection may be well founded. These are addressed as follows:

1. the objectives of the standard are achieved notwithstanding noncompliance with the standard;

Comment

As indicated above, it is considered that the objectives of the standard are achieved notwithstanding the variation to the floor space ratio sought.

2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

Comment

Not applicable. Objectives of the standard have been identified in MLEP 2013, and have been addressed above.

3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

Comment

Not applicable

4. the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;



Comment

Not applicable

5. the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone

Comment

Strict application of the standard is considered to be unreasonable and unnecessary in the current circumstance for the following reasons:

- The proposed technical variation to the minimum allotment size, does not result in any unreasonable impacts on the amenity of adjoining residential properties in terms of overshadowing, privacy, loss of views or loss of daylight;
- The proposed variation continues to recognise the existing environmental constraints of the site and retain the contextual relationship with other buildings in this locality;
- The proposed variation does not result in any material impacts in terms of privacy, views, solar access, separation distances, light and ventilation on any adjoining development in the immediate vicinity of the proposal or surrounds;
- The proposal will facilitate the enhancement of the existing building form to create a building or enhanced architectural merit, consistent with the desired future strategic vision for this locality.

For these reasons it is considered that strict application of this standard is unreasonable and unnecessary having regard for the particular circumstances of this case.

Further to the above it is considered that the proposed variation does not raise any matter of significance in relation to State or regional planning, and it is not anticipated that the variation will undermine the standard itself and lead to any potential adverse precedent.

The reason for this conclusion is that the proposed variation is very site specific and related to a specialised use of the subject site. In addition the technical variation to the minimum allotment size, will not change the contextual relationship with other buildings in this locality. Finally it is considered that there does not appear to be any public benefit in maintaining the minimum allotment size, adopted by the planning instrument in this instance.

The public benefit is to be found in the provision of an increase in the variety and choice of housing in this locality specifically, and in the Manly (now northern Beaches) locality generally.

For the reasons referred to above it is considered that the variation to the minimum allotment size control as sought in this application, should be approved."

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

(a) the consent authority is satisfied that:

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

Comment:

The applicants written request has adequately addressed the matters required to be demonstrated by subclause 3.

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



Comment:

For reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone in the MLEP 2013.

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

Comment:

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to the development standards under environmental planning instruments that adopt Clause 4.6 of the standard instrument where the variation to a numerical standard is no greater than 10%. In this case there is a variation of greater than 10% (to minimum lot size) and as such the application is referred to the Local Planning Panel.

Floor space ratio

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size development standard has taken into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement:	0.6:1
Proposed:	Lot 1: 0.69:1 (171.7m ²) Lot 2: 0.72:1 (149.4m ²) Lot 3: 0.7:1 (149.4m ²) Lot 4: 0.56:1
Is the planning control in question a development standard?	YES
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	Lot 1: 15.3% Lot 2: 19.3% Lot 3: 16% Lot 4: Compliant

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

Is the planning control in question a development standard?

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

What are the underlying objectives of the development standard?

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

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



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

Comment:

The proposal involves three of the four dwellings having a non-compliance with the numerical requirement for FSR. However, these dwellings will provide a sufficient bulk and scale in the streetscape due to the compliant building height, compliant open space, reasonable setbacks and sufficient landscaping. The proposal has a compliant setback to Bolingbroke Parade and well modulated setback to Lauderdale Avenue to ensure the presentation of bulk in these streetscapes is reasonable. In addition, although the setback is non-compliant at Arlington drive, the proposed garages are consistent with the type and bulk of development that is in the vicinity in the streetscape.

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

Comment:

As a result of the dwellings being associated with a proposed subdivision that is consistent with the streetscape, the proposed dwellings will be orientated in a similar way to surrounding development and this will not unreasonably obscure any landscape or townscape features.

c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Comment:

As a result of the setbacks either being compliant or complementary with surroundings, the new development would maintain an appropriate visual relationship with existing development. In addition, the compliant building height and compliant total open space will ensure the dwellings provide a bulk that is not overbearing in the area.

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

Comment:

As further assessed under the "Amenity" section of the Manly DCP 2013 in this report, the proposed development would not have any unreasonable impact on amenity or the public domain. Environmental impact is reasonable minimised through the proposed compliant height, compliant open space and sufficient setbacks (given the context of the area and site).

e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment:

Not applicable.

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

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R1 General Residential zone.

The underlying objectives of the R1 General Residential zone:

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

Comment:

The proposal provides four attached dwellings that will contribute to providing housing for the community.

It is considered that the development satisfies this objective.

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

Comment:

The proposed four attached dwellings would contribute to the variety of development types in the area.

It is considered that the development satisfies this objective.

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

Comment:

Not applicable.

It is considered that the development satisfies this objective.

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

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

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

Comment:

In this circumstance, providing flexibility to the floor space ratio development standard is appropriate as the non-compliance does not lead to any unreasonable amenity impact and would be appropriate in terms of bulk and scale in the street and locality context.

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

Comment:



It is appropriate to allow flexibility in this circumstance as an exceedance of floor space can occur for the dwellings without having any unreasonable impact on amenity and the proposed development would be visually appropriate given the context of the site and topographical nature of the surroundings.

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

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

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

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

Comment:

The following is from the written request submitted to and considered by Council:

*"As discussed previously in this report, there will be no adverse environmental impacts in relation to the use or enjoyment of adjoining land and the public domain
Further to the above, and as also indicated previously in the report, the character of the locality will not be adversely impacted by the proposed increase in the floor space ratio, and there are no existing vegetation, topography, public views and natural features of land, including the foreshore, which would limit the floor space, as proposed in this application
Similarly the compatibility of the building form to the size of the land will continue to be maintained.*

The potential impacts on solar access, privacy, and overshadowing have all been addressed previously in this report, and it can be concluded that the variation of the floor space ratio in this instance will have no adverse impacts on adjoining properties.

*As also indicated previously Council's DCP provides as follows:
the undersized nature of a lot is a matter that Council may consider in determining whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and 'there is sufficient environment planning grounds to justify contravening the development standard' under LEP clause 4.6(3).*

*Whilst Council does not particularly offer an incentive in this particular location, it does indicate that it will favour proposals that comply with the objectives of Manly Local Environmental Plan and the provisions of Manly Development Control Plan.
This is of particular importance given the shape and constraints of the site, the density of development, and the fact that the site has three street frontages.*

*As indicated previously it is considered that the proposed development essentially complies with the objectives of the LEP and the provisions of the DCP.
It can therefore be concluded that the variation in the floor space ratio, continues to acknowledge the environmental constraints of the site, and will not inhibit the contextual*



relationship between the subject land and that of adjoining residential development.

In terms of the relevant objectives of the Environmental Planning and Assessment Act, it is considered that the variation to the floor space ratio, will not have any adverse impact on the environmental constraints of the site, as addressed in this planning report, and in fact will contribute towards maintaining and enhancing the residential character of the locality.

In addition approval of the development is a use which is consistent with the zoning in this locality, as well as the orderly and economic use of that land.

It can therefore be concluded that the variation to the floor space ratio, is consistent with the relevant objects of the Act, which are as follows;

To encourage:

(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,

(ii) the promotion and co-ordination of the orderly and economic use and development of land.

Further to the above, Preston J has expressed the view that there are five different ways in which an objection may be well founded. These are addressed as follows:

1. the objectives of the standard are achieved notwithstanding noncompliance with the standard;

Comment

As indicated above, it is considered that the objectives of the standard are achieved notwithstanding the variation to the floor space ratio sought.

2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

Comment

Not applicable. Objectives of the standard have been identified in MLEP 2013, and have been addressed above.

3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

Comment

Not applicable

4. the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

Comment

Not applicable

5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone

Comment

Strict application of the standard is considered to be unreasonable and unnecessary in the current circumstance for the following reasons:

- The proposed technical variation to the floor space ratio, does not result in any unreasonable impacts on the amenity of adjoining residential properties in terms of overshadowing, privacy, loss of views or loss of daylight;*

This is of particular relevance, given that when viewed as a building in isolation to its individual units, the proposed overall development has a floor space ratio of 0.66:1 that is only a 6% variation to the maximum floor space ratio for the site.

- The proposed variation continue to recognise the existing environmental constraints of the site and retain the contextual relationship with other buildings in this locality;*



- The proposed variation does not result in any material impacts in terms of privacy, views, solar access, separation distances, light and ventilation on any adjoining development in the immediate vicinity of the proposal or surrounds;
- The proposal will facilitate the enhancement of the existing building form to create a building or enhanced architectural merit, consistent with the desired future strategic vision for this locality.

For these reasons it is considered that strict application of this standard is unreasonable and unnecessary having regard for the particular circumstances of this case.

Further to the above it is considered that the proposed variation does not raise any matter of significance in relation to State or regional planning, and it is not anticipated that the variation will undermine the standard itself and lead to any potential adverse precedent.

The reason for this conclusion is that the proposed variation is very site specific and related to the specific use of the subject site, which is a very low intensity use.

In addition the technical variation to the floor space ratio, will not change the contextual relationship currently experienced in relation to the existing dwelling on the site.

Finally it is considered that there does not appear to be any public benefit in maintaining the existing floor space control, adopted by the planning instrument in this instance.

The public benefit is to be found in the provision of the variety and choice of housing in this locality and Manly/Northern Beaches generally.

For the reasons referred to above it is considered that the variation to the minimum lot size control as sought in this application, should be approved."

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

(a) the consent authority is satisfied that:

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

Comment:

The applicants written request has adequately addressed the matters required to be demonstrated by subclause 3.

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

Comment:

For reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone in the MLEP 2013.

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

Comment:

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to the development standards under environmental planning instruments that adopt Clause 4.6 of the standard instrument where the variation to a numerical standard is no greater than 10%. In this case there is a variation of greater than 10% (to FSR for four attached dwellings) and as such the application could have been referred to the DDP, however due



to the Minimum Lot Size variations the application is referred to the Local Planning Panel.

6.4 Stormwater management

Subject to conditions.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 927.2m² (23 and 25 Lauderdale Avenue); Lot 1: 248.2m, Lot 2: 208.7m, Lot 3: 214.8m & Lot 4: 255.5m	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	250sqm of site area per dwelling	Lot 1: 248.2m ² /1 dwelling Lot 2: 208.7m ² /1 dwelling Lot 3: 214.8m ² /1 dwelling Lot 4: 255.5m ² /1 dwelling	N/A	Yes for Lot 4. No for Lots 1,2 and 3.
4.1.2.1 Wall Height	North-East: 7.1m (based on gradient 1:10)	8.3m	16.9%	No, see comments.
	South-West: 6.9m (based on gradient 1:15)	7.9m	14.5%	No, see comments.
4.1.2.2 Number of Storeys	2	2-3	N/A	No, see comments.
4.1.2.3 Roof Height	Height: 2.5m	1m	N/A	Yes.
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Bollingbroke Parade: 12.025m Arlington Drive: 3.12m-3.7m (for dwellings), 0.9m to balcony planter box.	N/A	Yes for Bollingbroke Parade. No for Arlington Drive.
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.3-2.37m (based on wall height)	South-west-1.63m Between proposed lots- 0m (attached dwellings) To Lauderdale Avenue (secondary street frontage): 2.25m-5.1m	N/A	No, see comments.
	Windows: 3m	1.63m	N/A	No, see comments.
	Secondary street	2.225m- 4.25m,	N/A	No, see



	frontage: Prevailing setback / 2.37m	consistent with prevailing setback		comments.
4.1.4.4 Rear Setbacks	8m	Arlington Drive: 3.12m-3.7m (for dwellings), 0.9m to balcony planter box.	N/A	No, see comments.
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area Lot 1: 136.51m ² Lot 2: 114.785m ² Lot 3: 118.14m ² Lot 4: 140.525m ² Open space above ground no more than 40% of total open space	- Lot 1: 144m ² Lot 2: 132m ² Lot 3: 142m ² Lot 4: 162m ² Lot 1: 32m ² Lot 2: 39m ² Lot 3: 39m ² Lot 4: 32m ²	N/A	Yes.
4.1.5.2 Landscaped Area	Landscaped area 35% of open space Lot 1: 59.5m ² Lot 2: 46.2m ² Lot 3: 49.7m ² Lot 4: 56.7m ²	- Lot 1: 94m ² (65.2%) Lot 2: 87m ² (65.9%) Lot 3: 93m ² (65.5%) Lot 4: 125m ² (77.1%)	N/A	Yes.
4.1.5.3 Private Open Space	12sqm per dwelling	22sqm per dwelling	N/A	Yes.
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6-11m	N/A	No, see comments.
Schedule 3 Parking and Access	2 spaces/dwelling	2 spaces/dwelling	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 x 100 = 95 then 100 - 95 = 5% variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3 Landscaping	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	No	Yes
4.1.1.1 Residential Density and Dwelling Size	No	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.2.1 Wall Height	No	Yes
4.1.2.2 Number of Storeys	No	Yes
4.1.2.3 Roof Height	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.4.1 Street Front setbacks	No	Yes
4.1.4.2 Side setbacks and secondary street frontages	No	Yes
4.1.4.4 Rear Setbacks	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements	Yes	Yes
4.1.5.2 Landscaped Area	Yes	Yes
4.1.5.3 Private Open Space	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	No	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.1.1 Additional matters for consideration	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

The proposal is inconsistent with the control for solar access to living rooms (under Clause 3.4.1.2).

The proposal does not eliminate more than one third of the number hours that sunlight is accessing the private open space between 9am and 3pm. However, the proposal does eliminate more than one third of the total space that sunlight accesses during these hours.

Merit consideration:

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

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

Comment:



The proposed development is located adjacent to 14 Bollingbroke Parade (which is to the south-west) and as a result the proposal would result in some shadowing impact to this neighbour. In particular, there will be additional impact to the rear open space and living areas to the south-eastern end of 14 Bollingbroke Parade. Although there will be some additional impact, a complying building envelope and complying subdivision pattern would cause a similar impact to this area as a result of its orientation. As such, the maintenance of more than two-thirds of existing sunlight hours accessing at least part of the rear open space (during the worst case scenario of winter solstice) and the maintenance of similar sunlight access between 10am and 12pm at the winter solstice for the rear living area provides a equitable outcome for maintaining access to light.

As a result of the compliant building height and reasonable physical separation between the dwellings and development on the opposite side of Arlington Drive, the proposal would also maintains equitable access to light and sunshine to living spaces opposite at Arlington Drive.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

The proposal maintains sunlight to a reasonable level at the rear of Bollingbroke Parade. This includes maintaining sunlight to both the rear open space and the living room high level slot window. Given the existing vulnerability of this area to the impact of overshadowing (without any change to subdivision or dwelling density) and the compliant setback to the first floor of unit 4 (the section causing the impact), this maintenance is an appropriate outcome. In addition, sunlight will be maintained to windows toward the front of 14 Bollingbroke Parade to provide adequate access for the whole of the site across the year.

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

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

Comment:

The proposed development is well modulated including the first floor and first floor balcony having a compliant setback to provide reasonable opportunity for sunlight to access living rooms and outdoor areas.

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

3.4.2 Privacy and Security



Description of non-compliance

The proposal is non-compliant with setbacks to the neighbouring property as outlined below under the "Setbacks section of this report.

Merit consideration:

As a result of the related non-compliance with setbacks, the development is also considered against the underlying Objectives of this clause as follows:

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

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

Comment:

The proposed elevation including design of windows and balconies adjacent to neighbouring property at 14 Bollingbroke Parade as well as opposite the properties at Arlington Drive, ensures that there is an appropriate minimisation of privacy loss.

The south-west elevation, adjacent to 14 Bollingbroke Parade provides windows that are sufficient in size (including narrow and short) as well as being well spaced away from neighbouring windows to ensure there would not be unreasonable opportunity for direct looking between the windows at each property. The adjacent ground balcony at the rear has a privacy screen and the first floor is setback to ensure the physical separation will minimise loss of privacy.

The appropriate physical separation between the balconies at Arlington Drive and the properties on the opposite side of the street, assisted by the buffer provided by the planter box at the front of the balcony, ensures there is also reasonable minimisation of privacy for this development.

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

Comment:

The proposal provides an adequate combination of physical separation and screening to ensure there is a sufficient compromise between privacy and access to light and air. This includes the appropriate design of the southern balcony of Unit 4 which has a appropriate setback and modulation to the top floor balcony, allowing sunlight to penetrate at this higher level, whilst providing a privacy screen at the lower level.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal has entrances and windows surrounding the site to provide adequate opportunity for awareness of neighbourhood security.

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



proposal is supported, in this particular circumstance.

3.4.3 Maintenance of Views

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

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Comment:

The proposal provides reasonable opportunity for view sharing through maintaining and providing views over the rear of the proposed subject site as well as to the rear of 14 Bollingbroke Parade. The proposed development will disrupt some views to the harbour to the south-east of the 14 Bollingbroke Parade but views remain at another corridor at the rear being to the south west. As a result of the disruption being proportionally minor when considering the overall views at 14 Bollingbroke Parade and the maintenance of the south-west corridor along with the potential views for the proposed development, view sharing is reasonable

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

An assessment of view loss for 14 Bollingbroke Parade, Fairlight has also been undertaken with reference to the Views Principle established by the NSW Land and Environment Court as follows:

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

Comment:

The proposed development would interrupt harbour views that are available to the south-east of the site (See photo 1 below). It is noted that the current views are partially disrupted by distant buildings and vegetation.



Photo 1: View to the south-east from first floor bedroom at 23-25 Lauderdale Avenue.

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.



Comment:

The views from the property are obtained to two corridors being to the south-east (See photo above) and to the south-west. These views are obtained from the first floor bedroom (photo above) and the first floor balcony. The balcony is orientated toward the view at the south-west and as such the proposed disruption would not be substantial from this area. The more substantial loss in the photo above is from the bedroom and over a side boundary to the rear.

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

Comment:

In consideration of the water view affected from the bedroom window and the other views available from the first floor level, the overall impact is assessed as being minor.

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Comment:

As a result of the compliance of the building with height and the reasonable setbacks to the balcony causing the view loss, the proposed minor view loss reasonable and the overall impact would not be substantially improved with further compliance of planning controls.

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

Comment:

The maintenance of view corridors and consistency with the court established planning principle for views provide a proposed development that reasonably minimises loss of views and opportunity for view creep.

It is noted that the revised plans submitted on 22 May 2018 further minimised the loss of views and potential for view creep by reducing the extent of the first floor balcony at the rear of Unit 4. This meant the angle of view from the upstairs bedroom and balcony at 14 Bollingbroke Parade, would be increased by the greater (and compliant) side setback to this balcony.

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



4.1.1.1 Residential Density and Dwelling Size

Description of non-compliance

The proposal would result in 4 sites, 3 of which would be non-compliant with the numerical control of 250sqm site area per dwelling. These non compliances are for Lots 1,2 and 3 as follows:

Lot 1: 248.2m²/1 dwelling

Lot 2: 208.7m²/1 dwelling

Lot 3: 214.8m²/1 dwelling

Lot 4 provides for a compliant area, being 255.5sqm for the dwelling proposed on the site.

Merit consideration:

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

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

Comment:

The proposal would result in four lots with four attached dwellings. Given the appropriate subdivision pattern and lack of amenity caused by this proposal, the new dwelling type and allotment sizes are an adequate contribution to the residential environment.

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

Comment:

The proposal provided compliant open space in accordance with the Manly DCP as well as adequate setbacks to limit impact on *existing vegetation, waterways, riparian land and the topography*. Subject to conditions, Council's Stormwater engineer and Landscape officer have no objection to development.

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

Comment:

The proposal is compliant with the control for minimum internal areas under Clause 4.1.1.1d). This ensures there would be an acceptable level of amenity.

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

Comment:

The proposed subdivision pattern and setback to development is complementary with the streetscape. This includes a similar pattern with two of the lots having a front and rear being orientated to Arlington and Bollingbroke Parade along with one lot being a corner allotment at Lauderdale Avenue. All four proposed dwellings have a front to the north-west and rear to the south east, which is generally consistent with the other dwellings on this side of Bollingbroke Parade.



Objective 5) To maximise the use of existing infrastructure.

Comment:

The proposal will maintain the use of existing infrastructure where appropriate, subject to conditions.

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

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

Description of non-compliance

The proposed wall heights are non-compliant with the controls of 7.1m at the north-east and 6.9m at the south-west, being proposed as 8.3m and 7.9m respectively.

The control for number of storeys is 2 and the proposed number of storeys is 3. It is noted that this includes a bottom storey for car parking and storage.

Merit consideration:

With regard to the consideration for a variation, the clause states that the objectives for Height of buildings under Clause 4.3 of the Manly LEP 2013 are particularly applicable and as such the non-compliances are considered against these objectives:

(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 overall building height is compliant with the development standard despite being non-compliant with the controls for number of storeys and wall height. The area is generally characterised by two and three storey development with a mixture of roof forms. The proposed attached dwellings would be at a lower height than the neighbouring dwelling at 14 Bollingbroke Parade and the style and height would appropriately fit into the surrounding area.

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

Comment:

The proposal involves three of the four dwellings having a non-compliance with the numerical requirement for FSR. However, these dwellings will provide a sufficient bulk and scale in the streetscape due to the compliant building height, compliant open space, reasonable setbacks and sufficient landscaping. The proposal has a compliant setback to Bollingbroke Parade and well modulated setback to Lauderdale Avenue to ensure the presentation of bulk in these streetscapes is reasonable. In addition, although the setback is non-compliant at Arlington drive, the proposed garages are consistent with the type and bulk of development that is in the vicinity in the streetscape.

(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 proposal reasonably minimises disruption to views as discussed under "Part 3 Maintenance of Views" of the Manly DCP in this report.

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

Comment:

The proposal reasonably provides for sunlight and solar access through adequate setbacks and physical separation to both public and private open spaces. This is further discussed under the "Sunlight Access and Overshadowing" section of this report under Part 3 of the Manly DCP.

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

Comment:

Not applicable.

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

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

Description of non-compliance

The proposal is non-compliant with the south-west side setback (1.63m-2.66m), the side setbacks between lots (0m), setbacks to windows (being 1.63m) and the rear setback to Arlington Drive (3.12m-3.7m).

Merit consideration:

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

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



Comment:

The proposal is for four dwellings which have a compliant building height, compliant setback to Bollingbroke Parade and consistent setback at Arlington Drive. The proposal is also compliant with all open space and landscape area controls to ensure the development fits in with the desired spatial proportions despite being non-compliant with the controls for wall height and number of storeys.

*Objective 2) To ensure and enhance local amenity by:
providing privacy;
providing equitable access to light, sunshine and air movement; and
facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.
defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and
facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

As discussed under the comments for Part 3 of the Manly DCP, the proposal will provide a reasonable outcome for amenity including privacy, access to light and view sharing. The setback of the first floor for Unit 4 provides a modulation that assists in sufficiently minimising the impact caused by the non-compliant south-western wall.

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

Comment:

The proposed four attached dwellings are located to the away from Bollingbroke Parade and close to Arlington Drive at the rear. Flexibility in regards to the setback to Arlington drive is warranted in this circumstance due to the complementary visual nature of the development with other structures in Arlington Drive and the lack of unreasonable amenity impact caused by this siting.

*Objective 4) To enhance and maintain natural features by:
accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;
ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and
ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposal provides for a compliant landscaped area for each lot under the Manly DCP and Council's Landscape officer has no objection to the application, subject to conditions. As such, the proposal will ensure that the natural feature are well provided on site.

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

Comment:

Not applicable.

Having regard to the above assessment, it is concluded that the proposed development is consistent



with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

Description of non-compliance

The proposed width of the garages are 6-11m. This is greater than 50% of the width of the lots.

Merit consideration:

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

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

Comment:

The proposal provides accessible parking to the rear of the site that is complementary with other garages in the street and is also integrated into the built form of dwellings to ensure the parking structure would not have an unreasonable visual impact.

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

Comment:

The proposal is compliant with the requirement for car parking and would sufficiently reduce demand for on-street car parking.

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.

Comment:

The proposed garages are integrated into the envelope of the dwellings to adequately minimise visual impact to the street. The existing streetscape at Arlington Drive is characterised by parking structures and the addition of further parking structures in this area would maintain an area with efficient, safe and convenient access.

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.

Comment:

The proposed car parking reasonably limits on site excavation as the majority of space for each garage



is above existing ground level.

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

Comment:

The proposed driveway access to each garage is the approximate width of one vehicle which reasonably minimises the width and number of footpath crossings.

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.

Comment:

The proposed parking has landscaping above in the form of a planter box and is integrated into the built forms of the dwellings.

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.

Comment:

In this circumstance, the compliant car parking situation for the residential sites is appropriate and limiting car parking on site is not required.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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 involves two additional dwellings which 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 \$40,000.00 (\$20,000.00 per additional dwelling) 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 Development Consent to DA2017/1304 for Demolition works and construction of 4 attached dwellings and 4 lot torrens title subdivision on land at Lot 1 DP 1087552, 25 Lauderdale Avenue, FAIRLIGHT, Lot 1 DP 168846, 23 Lauderdale Avenue, FAIRLIGHT, 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
A002- B - Subdivision Concept Plan	July 2017	Mark Hurcum Design Practice
A004- C- Demo and Excavation Plan	July 2017	Mark Hurcum Design Practice
A101- D- Basement Floor Plan	July 2017	Mark Hurcum Design Practice
A102- D- Ground Floor Plan	July 2017	Mark Hurcum Design Practice
A103- E- First Floor Plan	July 2017	Mark Hurcum Design Practice
A104- C- Roof Plan	July 2017	Mark Hurcum Design Practice
A106- A- Basement Floor Plan	July 2017	Mark Hurcum Design Practice
A201- E- Elevations	July 2017	Mark Hurcum Design Practice
A202- B- Elevations	July 2017	Mark Hurcum Design Practice
A221- B- Section A-A & B-B	July 2017	Mark Hurcum Design Practice
A222- B- Site Section	July 2017	Mark Hurcum Design Practice

Engineering Plans		
Drawing No.	Dated	Prepared By
A003- A - Sediment and Erosion Management Control Plan	July 2017	Mark Hurcum Design Practice
DA01- A Lower Ground Drainage Plan	December '17	NB Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arborist Letter- Construction Impact and Management Statement	December 2017	"Growing my way" Tree Consultants



Arborist Letter- DA2017/1304: Tree Management Enquiry from NBC (23-25 Lauderdale Avenue, Fairlight)	15 May 2018	"Growing my way" Tree Consultants
Construction Traffic Management Plan	December 2017	Urap International- Urban Research and Planning
Geotechnical Investigation	11 December 2017	JK Geotechnics

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Concept Plan	July 2017	Mark Hurcum Design

Note: This reference plan is to be amended to be consistent with the revised balcony and planter box design show in "A102- D- Ground Floor Plan" dated July 2017.

Waste Management Plan		
Drawing No.	Dated	Prepared By
Waste Management Plan	December 2017	Design Practice

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

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

FEES / CHARGES / CONTRIBUTIONS

4. **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.

5. **Section 94 Contribution - Residential**

A Section 94 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 4 attached dwellings is \$40,000.00, 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

6. **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 Northern Beaches Engineers, job number 171176, rev A, dated 27/11/2017. 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.

7. **Vehicle Crossings Application**

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

Reason: To facilitate suitable vehicular access to private property

8. **Waste Management for Multi dwellings**

All Multi Unit Dwellings must provide a location for dry recycling systems (i.e. recycling of paper and recyclable containers) and services.

All Multi Unit Dwellings are to designate a non paved area (min. 80cmx80cm) on site as space for communal or individual composting or worm farming units.

Details are to be issued prior to the issue of a Construction Certificate.

Reason: To ensure appropriate waste management. (DACHECPCC1)

9. **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.



10. **Tree Management and Protection Plan**

1) Tree 1: Frangipani

In order to protect the landscape amenity value of the existing Frangipani recommended for removal in the Tree Management report by Growing My Way, dated 15 May 2018, the 'local provenance' shall be protected as follows:

A Tree Management Plan is to be developed by a minimum AQF Level 5 Arborist to propagate three (3) cuttings of the existing Frangipani in accordance with the recommendations of the Tree Management Plan. The final location for planting shall be along the Lauderdale Ave frontages for Unit 1, 2 and 3.

Details of the Tree Management Plan are to be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

2) Tree 2: NSW Xmas Bush

A Tree Protection Plan is to be prepared by a minimum AQF Level 5 Arborist with assessment of the suitability to retain this tree to be made following demolition, and not at the commencement of works.

The Tree Protection Plan for Tree 2 shall provide the following information:

- Layout of the approved development
- Location of tree identified for retention
- Extent of canopy spread
- Location of tree protection fencing / barriers to be in place prior to the commencement of any demolition
- General tree protection measures

Following demolition of nearby structures, the Arborist is to provide an assessment on the suitability to retain this tree. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority. Removal of Tree 2 is subject to the recommendation of the Arborist assessment and recommendations.

Recommendation for retention shall be accompanied by additional post demolition tree care requirements as reported by the Arborist. Details shall be submitted by the Arborist to the Certifying Authority. Should the recommendations of the Arborist conclude that Tree 2 should be removed, a replacement NSW Xmas Bush (*Ceratopetalum gummifera*) shall be planted within the frontage of unit, at a minimum 75 litre pot size.

Reason: to retain and protect significant planting on the site.

11. **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)

12. **Bin room design and location**

The bin area must accommodate for 4 x 240L bins and screening to ensure the bins are not



visible from the street. The bin room must have a solid concrete path, which is free of obstructions, to the street kerb with a minimum width of 1200mm.

Reason: To ensure the bin storage area is appropriate.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. **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.

15. **tracked equipment on Council property**

In accordance with the Roads Act 1993, written consent from council must be obtained prior to any track equipped plant being taken into or onto any roadway, kerb & gutter, footway, nature strip or other property under Council's control.

Reason: To ensure proper protection of public infrastructure and facilitate access for traffic. (DACTRDPC1)

16. **application for Works Zone**

Applications for a Works Zone on a local road, if required, must be submitted on the relevant application form with no less than 28 days notice to Council indicating location, length & duration of the Works Zone. All Works Zones require separate approval through the Northern Beaches Council Traffic Committee.

Reason: To ensure Council and Traffic Committee have sufficient time and information to assess the implications of the Works Zone proposal and respond appropriately. (DACTRDPC2)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. **Vehicle Crossings**

The provision of four vehicle crossings 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property

18. **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.

19. **Safety Fencing of Excavation and/or demolition**

The site must be fenced throughout demolition and/or excavation and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.

Reason: To ensure private and public safety

20. **Maintenance of Sediment**

Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.

Reason: To ensure sediment controls are effective

21. **Waste Management During Development**

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

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

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

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

22. **Authorisation of Legal Documentation Required for On-site Stormwater Detention**

An application for the authorisation of legal documents is to be lodged with Council and payment of the associated fee. The application is to include the original completed request forms (Department of Lands standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and photographic evidence of the completed system.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard

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

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

Reason: To identify encumbrances on land. (DACENF02)

24. **Reinstatement of Kerb**

All redundant laybacks and vehicular crossings shall be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.



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

Reason: To facilitate the preservation of on street parking spaces. (DACENF03)

25. Restriction as to User for On-site Stormwater Detention

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

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

Reason: To ensure modification to the on-site stormwater detention structure is not carried without Council's approval. (DACENF04)

26. On-Site Stormwater Detention Compliance Certification

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans.

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

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

27. Positive Covenant for On-site Stormwater Detention

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

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

Reason: To ensure ongoing maintenance of the on-site stormwater detention system. (DACENF12)

28. Creation of Positive Covenant and Restriction as a User

Where any conditions of this Consent require the creation of a positive covenant and/or restriction as a user, the original completed request forms, (Department of Lands standard forms 13PC and/or 13RPA), shall be submitted to Northern Beaches Council for authorisation.

A certified copy of the documents shall be provided to Northern Beaches Council after final



approval and registration has been affected by the "Department of Lands".

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

Reason: To identify encumbrances on land. (DACENF14)

29. House / Building Number

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings. (DACPLF04)

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

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

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

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

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

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

Reason: To ensure consistent numbering for emergency services access. (DACPLF05)

31. 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 appropriate waste management. (DACPLFPOC1)

32. 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.

Reason: To ensure appropriate legal documentation for waste management. (DACPLFPOC2)

33. **reinstatement of Council infrastructure**

Any redundant section of vehicle crossing should be removed and replaced by kerb & gutter and damaged nature strip should be reinstated. The above work to be completed to Council's standards & satisfaction at no cost to Council prior to release of an occupation certificate.

Reason: To ensure council's infrastructure is reinstated to appropriate standards (DACTRFPOC1).

34. **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 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 covenant.

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

CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE

36. **Provision of Services for Subdivision**

The applicant is to ensure all services including, water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan.

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

Reason: To ensure that utility services have been provided to the newly created lots.

37. **Services**

All utilities/services and street lighting is to be installed by the applicant/developer. Certification is to be provided to Council stating the above requirement has been complied with.

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

Reason: Public safety and to ensure services have been provided for the newly created lots. (DACENH09)

38. **Sydney Water Compliance Certification**

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



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

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

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

Reason: To ensure compliance with the statutory requirements of Sydney Water. (DACENH13)

39. Certification of Utility Services

The provision of all utilities/services and/or street lighting are to be certified by the relevant authority(s) and/or authorised contractor.

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

Reason: To ensure services have been provided in accordance with the relevant authorities requirements. (DACENH15)

40. Easement for Services

An easement for services (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision and the accompanying 88B instrument to ensure all utility services are located within the appropriate easement(s).

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

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.(DACENH18)

41. Subdivision Certificate Application

Prior to the issue of the Subdivision Certificate, a completed Subdivision Certificate form, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919 are to be submitted to Council. Nine copies of the final plan of subdivision are to be submitted. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919. (DACENH24)

42. Title Encumbrances

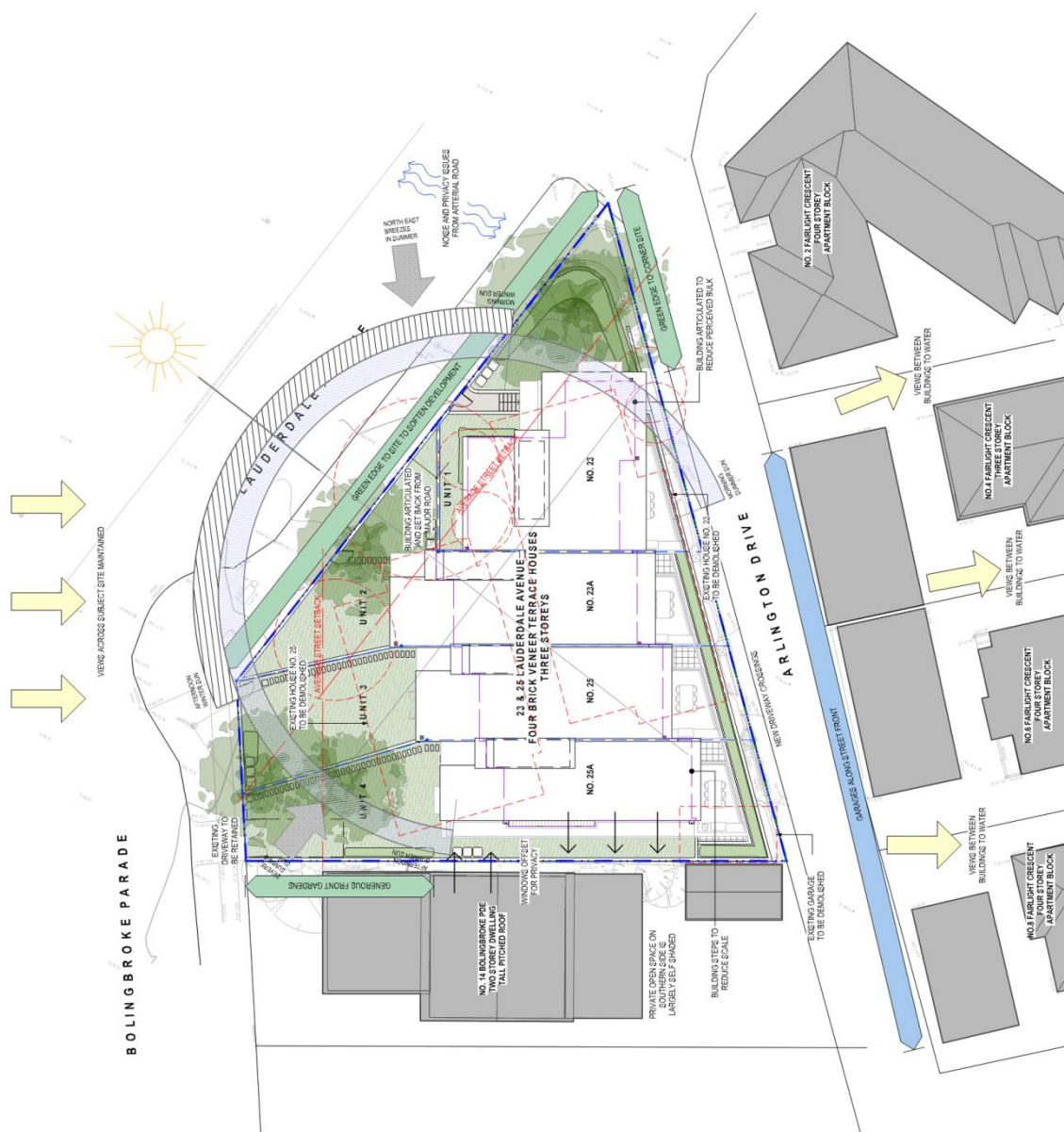
All easements, rights of carriageway, positive covenants and restrictions as to user as indicated on the plans and required by this consent are to be created on the title naming Warringah Council as the sole authority empowered to release or modify.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the



issue of the Subdivision Certificate.

Reason: To ensure proper management of land. (DACENHS14)

[illegible]

FOR DEVELOPMENT APPLICATION ONLY

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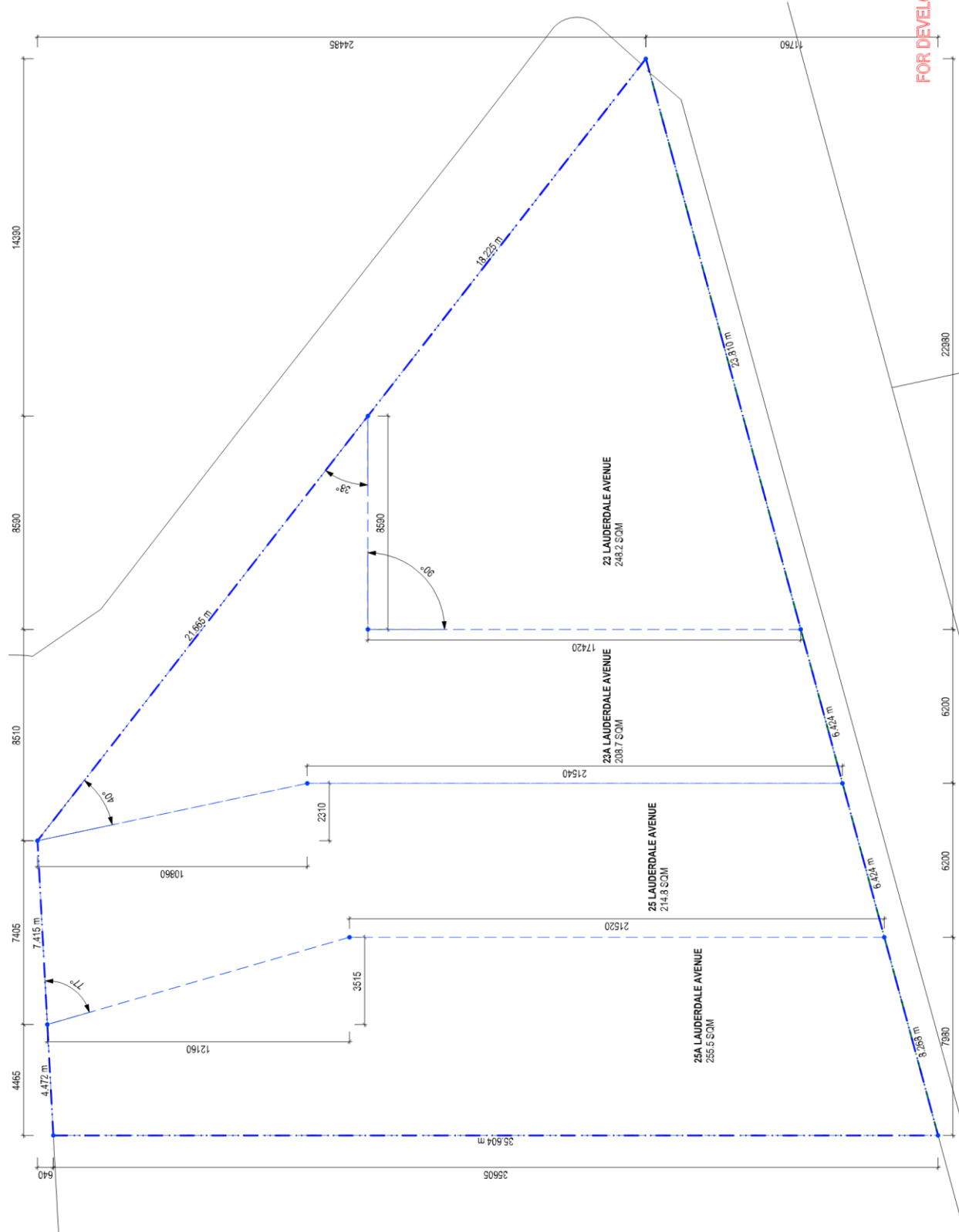
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JULY 2017

SITE PLAN AND SITE ANALYSIS: RICHMOND TERRACES

23 - 25 LAUDERDALE AVENUE FAIRLIGHT

THIS DESIGN REMAINS THE PROPERTY OF MARK HURDUM DESIGN PRACTICE AND MUST NOT BE COPIED OR LOANED WITHOUT WRITTEN CONSENT.



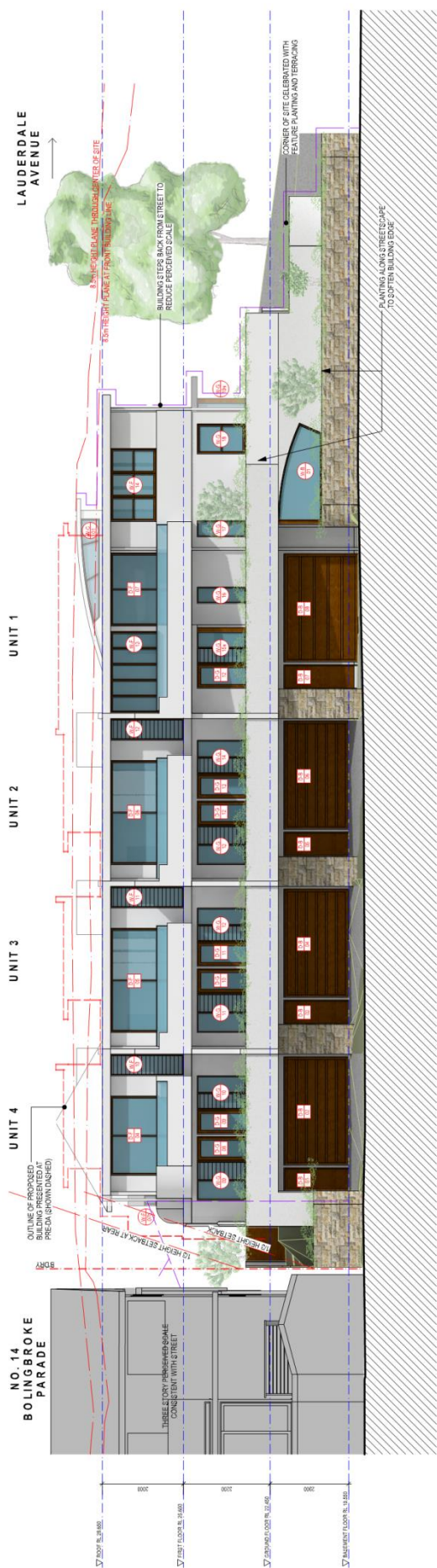
FOR DEVELOPMENT APPLICATION ONLY



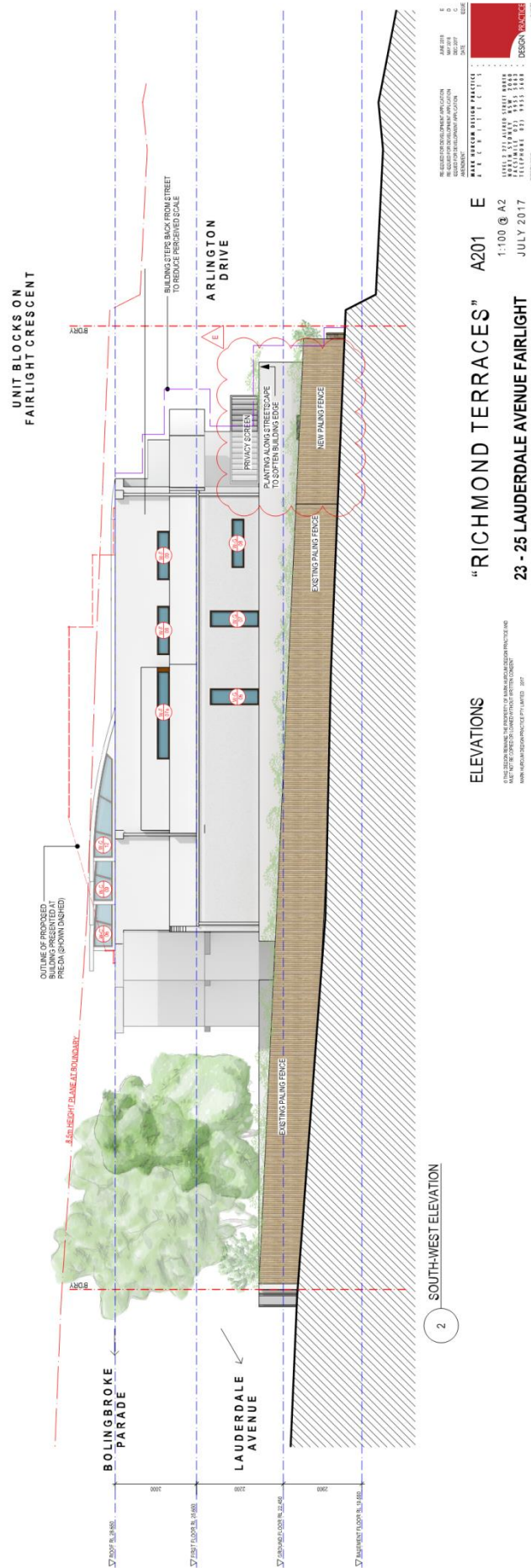
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JULY 2017

SUBDIVISION CONCEPT PLAN "RICHMOND TERRACES"
23 - 25 LAUDERDALE AVENUE FAIRLIGHT





1 SOUTH-EAST ELEVATION



SOUTH-WEST ELEVATION



ITEM 3.3	MOD2018/0065 - 38 STUART STREET, MANLY - MODIFICATION TO DEVELOPMENT CONSENT DA251/2008 GRANTED FOR THE DEMOLITION OF THE EXISTING BUILDING AND CONSTRUCTION OF A BUILDING COMPRISING TWO 2 DWELLINGS
REPORTING OFFICER	RODNEY PIGGOTT
TRIM FILE REF	2018/463475
ATTACHMENTS	1 ↓ Assessment Report

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as part of the proposed development is on council owned land.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. Mod2018/0065 for modification to Development Consent DA251/2008 granted for the demolition of the existing building and construction of a building comprising two dwellings at Lot 2 DP 252420, 38 Stuart Street, Manly for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0065
Responsible Officer:	Luke Perry
Land to be developed (Address):	Lot 2 DP 252420, 38 Stuart Street MANLY NSW 2095
Proposed Development:	Modification to Development Consent DA251/2008 granted for the demolition of the existing building and construction of a building comprising two dwellings
Zoning:	Manly LEP2013 - Land zoned E4 Environmental Living
Development Permissible:	No
Existing Use Rights:	No
Consent Authority:	Northern Beaches Local Planning Panel
Land and Environment Court Action:	No
Owner:	Sara Louise Lane Ross Boyd Lane
Applicant:	Ross Boyd Lane
Application lodged:	13/02/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	22/02/2018 to 12/03/2018
Advertised:	Not Advertised
Submissions Received:	7
Recommendation:	Refusal

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S79C Assessment
 Manly Local Environmental Plan 2013 - Zone RE1 Public Recreation
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

Property Description:	Lot 2 DP 252420 , 38 Stuart Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of a single allotment located on the south-western side of Stuart Street, Manly.</p> <p>The site is irregular in shape with a frontage of 12.2m along Stuart Street and a maximum depth of 59m. The site has a surveyed area of 592m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a residential flat building comprising two apartments.</p> <p>The site falls from the street frontage to the rear boundary which abuts Little Manly Beach. To the north east of the subject site the residential development is characterised by two and three storey dwellings and apartments in landscaped settings. Land surrounding the side and rear boundaries of the site is zoned RE1 Public Recreation and the land is owned by Council.</p> <p>A retaining wall located at the rear of the site separates the subject site from the beach front of Little Manly Beach. The existing stairs located at the rear extend onto the beach which is land zoned RE1 Public Recreation.</p>

Map:



SITE HISTORY

Relevant Applications

- DA561/2008 - for demolition of existing residential flat building and erection of a three storey residential flat building comprising of two (2) units including double garage, swimming pool and landscaping works approved by the Land and Environment Court on 7/10/09.
- DA261/08 Part 1 - modification application to modify consent to add an underground basement area under part of the approved building footprint approved on 17/06/10.
- DA261/08 Part 2 - modification application to modify the internal layout and to make minor amendments to the pool and fences approved on 12/08/10.
- DA261/08 Part 3 - modification application to add a separate pedestrian walkway direct from the footpath to the building foyer and modified driveway was approved on 16/08/11.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks to modify development consent DA251/2008 granted for the demolition of the existing building and construction of a building comprising two 2 dwellings. DA261/2008 was granted consent by the Land and Environment Court (*'Lane v Manly Council [2009] NSWLEC 1329'*).

Specifically the proposal seeks to modify Condition No. DA1 which reads as follows:

"....The landscape plan above is to be amended prior to the issuing of the Construction Certificate in accordance with the red markings and notations as shown in Exhibit F in the proceedings and this includes:

- (a) deletion of both existing and the proposed stairs from subject property to the beach;*
- (b) the side boundary fence with No. 36 to be a maximum height of 1.2m for a distance of 18m from the south-western corner with the beach; and*
- (c) deletion of timber screen and curved portion of deck in vicinity of common boundary with No. 36..."*

The proposal seeks to delete the words '**both existing and**' from (a). The modified condition is proposed to read as follows:

"....The landscape plan above is to be amended prior to the issuing of the Construction Certificate in accordance with the red markings and notations as shown in Exhibit F in the proceedings and this includes:

- (a) deletion of **both existing and** the proposed stairs from subject property to the beach;*
- (b) the side boundary fence with No. 36 to be a maximum height of 1.2m for a distance of 18m from the south-western corner with the beach; and*
- (c) deletion of timber screen and curved portion of deck in vicinity of common boundary with No. 36...."*

It should be noted that the stairs extend from the rear boundary of the site onto the adjoining Council owned land which is zoned RE1 Public Recreation under Manly Local Environmental Plan 2013 and no owners consent from Council has been lodged with this application.

HISTORY OF SUBJECT APPLICATION

Following a preliminary assessment of the application, Council wrote to the applicant by letter dated 14 May 2018 detailing a number of fundamental issues that would not allow Council to support the application in its current form.

The applicant responded to the letter on 30 May 2018. The applicant sought to provide additional information to address some of the concerns raised with regards to Council's Coastal Officer's referral response.

The submission of additional information was not accepted/agreed to in accordance with s55 of the Environmental Planning and Assessment Regulation 2000, the applicant was advised of this on 30 May 2018. The application has been assessed on the information as originally submitted.

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 DA261/2008, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56 - Modification by consent authorities of consents granted by the Court	Comments
(1) 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 DA261/2008.
(b) 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 2013 and Manly Development Control Plan.
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA261/2008.
(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 79C Assessment

In accordance with Section 96(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 79C(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this 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 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>
Section 79C (1) (b) – the likely	(i) Environmental Impact

Section 79C 'Matters for Consideration'	Comments
impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>As detailed throughout this report, the proposed retention of the existing stairs for access to private property from and onto public land and continuance of an unlawful encroachment onto Council land results in unreasonable environmental impact.</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 79C (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	<p>This assessment has found the proposal to be contrary to the relevant requirement(s) and objectives of the land use Zone RE1 Public Recreation and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community.</p> <p>The proposed retention of the existing stairs onto public land unreasonably impacts upon the orderly and public use of Little Manly Beach (public reserve).</p> <p>In this regard, the development, as proposed, is not considered to be in the public interest.</p>

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 7 submission/s from:

Name:	Address:
Ms Judith Rosemary Brain	71 Stuart Street MANLY NSW 2095
Miss Susan Janis Rice	3/57 Stuart Street MANLY NSW NSW 2095
Nicolas Ewald	3 / 57 Stuart Street MANLY NSW 2095
Mr David Anthony Parsons	7 Canea Crescent ALLAMBIE HEIGHTS NSW 2100
Mr Evelyn Arthur Shervington	82/1 Addison Road MANLY NSW 2095
Ms Jacqueline French	1/11 Stuart Street MANLY NSW 2095
Mr Gregory Raphael Mullens	21 Peacock Street SEAFORTH NSW 2092

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

- *The Court refused to grant consent to the stairs providing direct access onto the public beach.*
- *The conditions of the Court should be retained.*
- *The stairs obstruct the beach and the public use of the beach*
- *The retention of the stairs is not in the public interest.*
- *The stairs effect the community use of the land and should be removed.*
- *The stairs have an adverse impact on the public domain and the use and enjoyment of Little Manly Beach.*

The matters raised within the submissions are addressed as follows:

As detailed throughout this Assessment Report, the assessment of this modification application generally concurs with the issues raised above.

The proposed modification is inconsistent with the objectives and requirements of land use Zone RE1 Public Recreation, Clause 6.9 Foreshore scenic protection area under Manly Local Environmental Plan 2013 and is not considered to be in the public interest.

Further, the proposed stairs sit within public land owned by Northern Beaches Council. The development as proposed relates to the retention of stairs within land owned by Northern Beaches Council requires owners to be provided with the application. No owners consent has been provided within the application and this has been included as a reason for refusal.

These matters have been included as reasons for refusal contained within the Recommendation of this Assessment Report.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	Retain existing biodiversity conditions for DA0261/2008.
NECC (Coast and Catchments)	The following reports have been reviewed: <ul style="list-style-type: none"> • Statement of Environmental Effects

Internal Referral Body	Comments
	<p>The Section 96 Modification is not supported. The intent and details of the original court condition (Condition DA1) for removal of the existing access stairs is supported.</p> <p>The existing access stairs are not on private property and result in an encroachment on to the Little Manly public beach reserve.</p> <p>The encroachment is not consistent with Sydney Regional Environment Plan (Sydney Harbour Catchment) 2005 and Sydney Harbour Foreshores and Waterways Area: Development Control Plan 2005 (Part 2 Planning Principles and Division 2 Matters for consideration).</p>
Parks, reserves, beaches, foreshore	<p>The Section 96 Modification is not supported. The intent and details of the original court condition (Condition DA1) for removal of the existing access stairs is supported.</p> <p>The existing access stairs are not on private property and result in an encroachment on to the Little Manly public beach reserve.</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

Council records indicate that the subject site has been used for 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.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Foreshores and Waterways Area therefore the provisions of this plan apply to this development.

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 25 (relating to foreshore and waterways scenic quality) and Clause 26 (relating to maintenance, protection and enhancement of views) has been undertaken. The proposal is considered to be inconsistent with the above provisions of the SREP.

This has been included as a reason for refusal.

Manly Local Environmental Plan 2013

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

Principal Development Standards

There are no development standards applicable to the assessment of the proposed modification.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	N/A
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	No
6.10 Limited development on foreshore area	N/A

Detailed Assessment

Zone RE1 Public Recreation

The underlying objectives of the RE1 Public Recreation zone

- To enable land to be used for public open space or recreational purposes.*

Comment:

The existing stairs provide an obstruction within an existing public reserve and limit the ability for public to use the land for public open space or recreational purposes.

The proposed modification is inconsistent with this objective.

- To provide a range of recreational settings and activities and compatible land uses.*

Comment:

The proposed retention of the existing stairs for access to private property from and onto public land does not allow for the adjoining public reserve to provide a range of recreational settings, activities and is not a compatible land use.

The proposed modification is inconsistent with this objective.

- To protect and enhance the natural environment for recreational purposes.*

Comment:

The proposed retention of the existing stairs for access to private property from and onto public land does not protect or enhance the natural environment of the Little Manly Beach area for recreational purposes.

The proposed modification is inconsistent with this objective.

- To protect, manage and restore areas visually exposed to the waters of Middle Harbour, North Harbour, Burnt Bridge Creek and the Pacific Ocean.*

Comment:

The proposed retention of the existing stairs for access to private property from and onto public land does not protect, appropriately manage or restore the Little Manly Beach which is visually exposed to the Harbour waters.

The proposed modification is inconsistent with this objective.

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

Comment:

The existing stairs which are proposed to be retained result in an encroachment onto public land (Little Manly Beach). The stairs do not have regard to the existing vegetation, topography or the intended use of surrounding RE1 zoned land.

The proposed modification is inconsistent with this objective.

Conclusion

The proposed modification is inconsistent with the objectives of the RE1 Public Recreation zone. The stairs result in an encroachment onto public land and obstruct the public and orderly use of the land. This has been included as a reason for refusal.

Permitted land uses

The following items are listed as permitted with consent:

'3 Permitted with consent

Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Car parks; Centre-based child care facilities; Charter and tourism boating facilities; Community facilities; Depots; Emergency services facilities; Environmental facilities; Environmental protection works; Flood mitigation works; Information and education facilities; Jetties; Kiosks; Marinas; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Research stations; Respite day care centres; Restaurants or cafes; Roads; Take away food and drink premises; Water recreation structures; Water recycling facilities; Water reticulation systems; Water storage facilities'

The application relies upon the permissibility of 'recreation area' in seeking to retain the stairs.

Recreation area is defined as:

'recreation area means a place used for outdoor recreation that is normally open to the public, and includes:

- (a) a children's playground, or
 - (b) an area used for community sporting activities, or
 - (c) a public park, reserve or garden or the like,
- and any ancillary buildings, but does not include a recreation facility (indoor), recreation facility (major) or recreation facility (outdoor).'

Comment:

The proposed retention of the existing stairs for access to private property from and onto public land is inconsistent with land use definition of 'recreation area'. Therefore the development is not permissible

within the RE1 Public Recreation zone and this has been included as a reason for refusal.

6.9 Foreshore scenic protection area

Detailed Assessment

1) *The objective of this clause is to protect visual aesthetic amenity and views to and from Sydney Harbour, the Pacific Ocean and the foreshore in Manly.*

Comment:

The proposed retention of the stairs which protrude onto public land has an unreasonable impact on the visual aesthetic amenity and views to and from Sydney Harbour and the foreshore of Little Manly Beach.

The proposed modification is inconsistent with this objective.

2) This clause applies to land that is shown as "Foreshore Scenic Protection Area" on the Foreshore Scenic Protection Area Map.

Comment:

The subject site is located on land identified as being within the "Foreshore Scenic Protection Area" on the Foreshore Scenic Protection Area Map.

3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:*

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) measures to protect and improve scenic qualities of the coastline,*
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment:

The proposed modification will result in a detrimental impact on the visual amenity of the Harbour and Little Manly Beach foreshore.

The encroachment of the stairs from private land onto public land has an unreasonable impact on the foreshore and obstructs the public use of the land. The development is therefore unsuitable in its current form.

The proposed modification is inconsistent with this objective.

Conclusion

The proposed modification is inconsistent with the objectives of this Clause and this has been included as a reason for refusal. _

Manly Development Control Plan

Built Form Controls

There are no built form controls applicable to the assessment of the proposed modification.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1 Residential Development Controls	N/A	N/A
4.1.4 Setbacks (front, side and rear) and Building Separation	N/A	N/A
4.1.4.4 Rear Setbacks	N/A	N/A
5.4.1 Foreshore Scenic Protection Area	No	No

Detailed Assessment

5.4.1 Foreshore Scenic Protection Area

Detailed Assessment

5.4.1 Foreshore Scenic Protection Area

LEP clause 6.9 designates land in the Foreshore Scenic Protection Area as shown on the LEP Foreshore Scenic Protection Area Map to protect visual aesthetic amenity and views both to and from Sydney Harbour, the Pacific Ocean and the Manly foreshore. Development in the Foreshore Scenic Protection Area must not detrimentally effect the 'visual or aesthetic amenity of land in the foreshore scenic area nor must the development similarly effect the views of that land, including ridgelines, tree lines and other natural features viewed from the Harbour or Ocean from any road, park or land in the LEP for any open space purpose or any other public place. Any adverse impacts considered in this paragraph will be mitigated. In accordance with these LEP objectives Council seeks to conserve and preserve tree canopies and street trees, wildlife corridors and habitat and minimise cumulative impacts on escarpment, rock shelves and other natural landscape features.

5.4.1.1 Additional matters for consideration

LEP clause 6.9(3)(a) to (d) lists certain matters to be taken into account in relation to all development within the Foreshore Scenic Protection Area.

a) Further to matters prescribed in the LEP, the development in the Foreshore Scenic Protection Area must also:

- i) minimise the contrast between the built environment and the natural environment;
 - ii) maintain the visual dominance of the natural environment;
 - iii) maximise the retention of existing vegetation including tree canopies, street trees, wildlife corridors and habitat;
 - iv) not cause any change, visually, structurally or otherwise, to the existing natural rocky harbour foreshore areas;
 - v) locate rooflines below the tree canopy;
 - vi) consider any effect of the proposal when viewed from the harbour / ocean to ridgelines, tree lines and other natural features; and
 - vii) use building materials of a non-reflective quality and be of colours and textures that blend with the prevailing natural environment in the locality.
- b) Setbacks in the Foreshore Scenic Protection Area should be maximised to enable open space to dominate buildings, especially when viewed to and from Sydney Harbour, the Ocean and the

foreshores in Manly.

Comment:

As detailed under the Manly Local Environmental Plan 2013 (Clause 6.9) section of this report, the proposed modification is considered to be inconsistent with the objectives and requirements of this Clause and this has been included as a reason for refusal.

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.

Owners consent

The proposed modification relates to the retention of an existing staircase that extends onto Little Manly Beach which is a public reserve owned by Council.

The stairs are located wholly within the public reserve and abut the rear boundary of the site.

In accordance with Clause 115(1)(h) of Environmental Planning and Assessment Regulation 2000, if the applicant is not the owner of the land, as is this case in this circumstance, an application for modification of a development consent must contain '*a statement signed by the owner of the land to the effect that the owner consents to the making of the application*'.

The modification application does not contain owners consent from Northern Beaches Council as the land owner of the land to which this application relates.

This has been included as a reason for refusal.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

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

RECOMMENDATION

THAT Council, as the consent authority REFUSE Modification Application No. Mod2018/0065 for Modification to Development Consent DA251/2008 granted for the demolition of the existing building and construction of a building comprising two dwellings on land at Lot 2 DP 252420, 38 Stuart Street, MANLY, subject to the reasons outlined as follows:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Manly Local Environmental Plan 2013.
1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Manly Local Environmental Plan 2013.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the objectives of the land use zone RE1 Public Recreation of the Manly Local Environmental Plan 2013.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is prohibited within the land use zone RE1 Public Recreation of the Manly Local Environmental Plan 2013.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.9 Foreshore Scenic Protection Area of the Manly Local Environmental Plan 2013.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 5.4.1 Foreshore Scenic Protection Area of the Manly Development Control Plan.
6. Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979 the application does not comply with the provisions of Clause 115(1) of the Environmental Planning and Assessment Regulation 2000, in that the application does not provide the required information in the form of owners consent in writing from the owners of the adjoining land, being public land owned by Northern Beaches Council.
7. Pursuant to Section 4.15 (1)(e) of the Environmental Planning and Assessment Act, 1979 the proposed development is not in the public interest as the development is contrary to the relevant requirement(s) and objectives of the land use Zone RE1 Public Recreation and is contrary to the expectations of the community. The proposed retention of the existing stairs onto public land unreasonably impacts upon the orderly and public use of Little Manly Beach (public reserve).
8. Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 .

ITEM 3.4	DA2018/0069 - 42 NORTH STEYNE, MANLY - CHANGE OF USE TO TOURIST AND VISITOR ACCOMMODATION
REPORTING OFFICER	RODNEY PIGGOTT
TRIM FILE REF	2018/468070
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan

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. DA2018/0069 for change of use to tourist and visitor accommodation at Lot 1 DP 1034722, 42 North Steyne, Manly subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/0069
Responsible Officer:	Luke Perry
Land to be developed (Address):	Lot 1 DP 1034722, 42 North Steyne MANLY NSW 2095
Proposed Development:	Change of use to tourist and visitor accommodation
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Local Planning Panel
Land and Environment Court Action:	No
Owner:	Barecall Pty Ltd
Applicant:	John Oppedisano
Application lodged:	19/01/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Tourist
Notified:	31/01/2018 to 20/02/2018
Advertised:	10/03/2018
Submissions Received:	12
Recommendation:	Approval
Estimated Cost of Works:	\$ 0.00

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 - 3.4.2 Privacy and Security
Manly Development Control Plan - 4.2.5.4 Car Parking and Access

SITE DESCRIPTION

Property Description:	Lot 1 DP 1034722 , 42 North Steyne MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of a single allotment located on the western side of North Steyne.</p> <p>The site is regular in shape with a frontage of 12.09m along North Steyne and a depth of 39.11m. The site has a surveyed area of 408m².</p> <p>The site is located within the B2 Local Centre zone and accommodates a mixed use building comprising a bar and restaurant on the lower levels and residential apartments on the upper levels. Car parking for 7 vehicles is provided at basement level off Henrietta Lane at the rear (west) of the site.</p> <p>The site is located within the Manly Town Centre and is surrounded by a range of similar commercial and residential land uses. Immediately adjoining the site to the south is a licensed premises commonly known as 'The Steyne Hotel'.</p> <p>The site is flat without any topographical constraint.</p>

Map:



SITE HISTORY

Relevant Applications

Development application No. 215/98 - for mixed commercial and residential building was approved on 8 February 1998.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the change of use of the 8 existing residential apartments to tourist and visitor accommodation (short term accommodation).

There are 3 apartments (2 x 3 bedroom and 1 x 2 bedroom) located on the second floor, 3 apartments (2 x 2 bedroom and 1 x 3 bedroom) located on the third floor and 2 apartments (1 x 1 bedroom and 1 x 2 bedroom) located on the fourth floor.

The proposal also seeks to have the following condition imposed on any approval that may be granted:

'The consent for the use of the eight (8) residential units for tourist and visitor accommodation shall be limited to a period of ten (10) years unless extended in writing by Council by way of a section 96 application or further development application. At the expiration of the consent, the premises shall automatically revert back to residential dwellings. If an application is made to extend the period of the consent at least 3 months prior to expiration, the use as tourist and visitor accommodation shall be permitted to continue until such time that the subject application is finally determined.'

There are no physical works proposed as part of this application.

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)



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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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 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 clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This 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</p>

Section 4.15 Matters for Consideration'	Comments
	building designer prior to the issue of a Construction 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 "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 12 submission/s from:

Name:	Address:
Withheld	MANLY NSW 2095
Withheld	MANLY NSW 2095
Mrs Anne Jacqueline Layton	Care Belle Property 14/19 Bungan Street MONA VALE NSW 2103
Jim O'Shea	7/43-45 North Steyne MANLY NSW 2095
Mr Richard Roy Goodmanson	705/9-15 Central Avenue MANLY NSW 2095
Mr Gregory Ernest Brown	8 MacQuarie Road PYMBLE NSW 2073
Withheld	MANLY NSW 1655
Faustino Martinez De Morentin	508/9-15 Central Avenue MANLY NSW 2095



Name:	Address:
Mr Ray Caryl Stone	704 / 9 - 15 Central Avenue MANLY NSW 2095
Withheld	MANLY NSW 2095
Ms Zina Dybac	509 / 9 - 15 Central Avenue MANLY NSW 2095
Withheld	MANLY NSW 2095

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

- **Noise**
- **Floor Space Ratio**
- **Strata management act**
- **Loss of residential accommodation**
- **Existing compliance issues**
- **Fire safety**
- **Car parking**
- **Waste room**
- **Privacy**

The matters raised within the submissions are addressed as follows:

Noise

Concerns are raised that the proposed use of the apartments for tourist and visitor/short term accommodation will result in unreasonable noise impacts on adjoining properties and that anti social behaviour will occur.

Comment:

This matter has been addressed by the imposition of suitable conditions of consent relating to the ongoing management of the development (including the appointment of a building manager), limitation on the occupancy of each apartments and a noise management plan.

A condition has been included in the recommendation of this report requiring a 24-hour telephone line to be set up for members of public to call to alert the building manager to disturbances caused by the user's of the short term accommodation. The phone number is to be included in the Plan of Management.

The details of the building manager are to be distributed to surrounding properties and a sign with the contact details of the building manager is to be placed in a prominent and accessible location within the common property area of the building.

Any ongoing noise issues/nuisance or anti social behaviour is covered by a separate piece of legislation and enforcement investigation/action is able to be taken by Council if noise issues arise in the future. Alternatively these matters are matters that can be dealt with by the NSW Police.

This matter does not warrant refusal of the application.

Floor Space Ratio

Concern is raised that the proposal does not comply with the floor space ratio control as there is no control on numbers.



Comment:

The proposal does not result in any change to the approved amount of floor space. A condition has been included in the Recommendation of this report placing a limitation on maximum occupancy of each apartment.

This matter does not warrant refusal of the application.

Strata management act

Concern is raised that the strata management act restricts the number of people that can be accommodated within a unit and that this application does not address this.

Comment:

The Strata Management Act is a separate piece of legislation and is not relevant to the assessment of this application.

A condition of consent limiting the occupancy of each apartment has been included the recommendation of this report.

The condition reads as follows and is considered to be adequate in restricting the occupancy numbers of each apartment and ensuring amenity is maintained:

'The maximum occupancy of each apartment is to be limited to the following:

- *Maximum of 2 adult and 1 child to each double room; and*
- *Maximum of 1 adult and 1 child to each single room.*

Reason: To maintain amenity.'

This matter does not warrant refusal of the application.

Loss of residential accommodation

Concerns are raised that this proposal will result in the loss of residential accommodation within the Manly area.

Comment:

Tourist and visitor accommodation is a permissible land use within the B2 Local Centre zone. The proposed use adds to the variety of land uses within the zone and a use that will serve the needs of people who visit the local area.

Further, the proposal is considered to be consistent with the zone objectives and is therefore recommended for approval in this instance.

This matter does not warrant refusal of the application.

Existing compliance issues

The apartments are currently being used unlawfully as short term accommodation and advertised on 'Air B-n-B'.

Comment:



The allegation of unlawful land use are currently the subject of ongoing compliance action by Council's Building Control Team (refer to EPA2018/0076).

The investigation is currently on hold pending the outcome of this application. This is a separate and ongoing matter and is not relevant to the assessment of this application and therefore no further comment is made in this regard.

This matter does not warrant refusal of the application.

Fire safety

Concern is raised regarding the fire safety of the building.

Comment:

This matter has been addressed by the imposition of conditions of consent relating to Fire Safety and the requirement for a Fire Safety Certificate to be issued prior to the issue of a Occupation Certificate.

This matter does not warrant refusal of the application.

Car parking

Concern is raised regarding the parking for the proposed use.

Comment:

There is no change to the existing and proposed car parking arrangements for the building.

A condition has been included in the Recommendation of this report to ensure that car spaces are adequately marked and sign posted in accordance with any other approvals for the building and instructions/directions for future occupants of the tourist and visitor accommodation are included in House Policy component of the Plan of Management.

This matter does not warrant refusal of the application.

Waste room

Concern is raised that there is insufficient areas for garbage bins to be provided.

Comment:

The plans submitted with the application indicate suitable areas for waste storage located on the ground floor adjacent to the lift and stairwell.

The development will be the subject of ongoing conditions of consent relating to waste management and the building manager must ensure that waste is stored in accordance with this consent and that occupants are made aware of waste storage location.

This matter does not warrant refusal of the application.

Privacy

The following specific concerns have been raised:

'The Applicant's building does not have adequate privacy screens on the verandahs on the northern side of his building and the residents of our building at 43-45 North Steyne have to suffer a constant



parade of new guests from the "Lux units" in number 42 North Steyne looking into our living spaces.'

Comment:

The apartment located on the northern most edge of top floor (Unit 2) of the development provides balcony areas at the rear that have a direct and open relationship with the adjoining properties to the north.

The rear balcony of Unit 2, as shown on the plans submitted with the application, provide some minor privacy screening that is affixed to the small concrete wall on the outermost northern edge.

The screening does not extend along the entire northern edge and there is opportunities for occupants of Unit No.2 to overlook the adjoining property to the north.

In this regard, it is considered reasonable to impose a condition which requires the erection of privacy screening along the entire northern edge of the rear balcony to Unit No.2 to ensure no unreasonable overlooking occurs.

The privacy screen must be at a minimum height of 1.65 metres (measured from finished floor level). The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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 investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p><i>Note: The residential dwellings to be used for visitor and tourist accommodation must maintain their classification as "sole occupancy units" and not be allowed to be used for multiple occupants beyond that which is permitted under the BCA.</i></p>
Environmental Health (Food Premises, Skin Pen.)	<p>Environmental Health has review the referral and is concerned with the noise generated from the short stay residence that may create an offense to neighbouring residential properties. Environmental Health recommends the following conditions to address these matters:</p> <p>Noise Management Plan</p> <p><i>A Noise Management Plan is to be prepared for the accommodation.</i></p> <p><i>The Plan is to address the following (but not limited to):</i></p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> Measures implemented to minimise noise impacts from tenants on surrounding residential premises Implementation of noise curfews in accordance with the Protection of the Environment Operations Act 1997 A contact phone number of the owner should be made available to neighbour's to facilitate communication and to resolve any neighbourhood issues that may arise due to the operation of the accommodation and at the time of an offense. <p><i>Reason: To maintain a reasonable level of amenity to the area.</i></p> <p><u>Assessment Officers comment:</u></p> <p>These matters have been addressed within the Recommended condition of consent 'Condition. No. 13 Operational Plan of Management'.</p>
NECC (Development Engineering)	<p>The proposed application does not include any alternation work to the building.</p> <p>Development engineer has no objection to the application.</p> <p>No engineering condition is required.</p>
Waste Officer	No objections to the proposed development.

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

There are no development standards applicable to the assessment of this application.

Compliance Assessment

Clause	Compliance with Requirements
6.15 Tourist and visitor accommodation	Yes

Manly Development Control Plan

Built Form Controls

There are no built form controls applicable to the assessment of this application.

Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.6 Accessibility	Yes	Yes
3.8 Waste Management	Yes	Yes
3.8.1 Waste and Recycling Storage Areas	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.4 Car Parking and Access	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Detailed Assessment

Relevant DCP objectives to satisfy in relation to this part include the following:

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

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

Comment:

The proposal does not seek to alter the design of the existing residential apartments rather it seeks to utilise the existing apartments as tourist and visitor accommodation. The design of the building mitigates direct viewing between windows and outdoor living areas of adjacent buildings. However it is noted that the rear balcony area of Unit No. 2 on the upper most floor provides the ability to overlook the adjoining property to the north.

In this regard a condition has been included in the recommendation of this report requiring the erection of 1.65m high privacy screen along the entire northern edge of the rear balcony of Unit No.2 to limit opportunities for overlooking to occur and maintain privacy (visual and acoustic) between buildings.

It should be noted that all of the residential component of the existing building is proposed to be used as tourist and visitor accommodation removing any internal conflict within the building.

The development satisfies this objective.

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



Comment:

As detailed above, the proposal does not seek to alter the design of the existing residential apartments rather it seeks to utilise the existing apartments as tourist and visitor accommodation.

The addition of a privacy screen along the northern edge of Unit No. 2 increases privacy (visual and acoustic) without compromising access to light and air. Outlook and views from the balcony area are still provided to the south and west.

The rear facing balconies of the subject building provide a direct relationship with the balcony areas of the adjoining property to the west (Pacific Waves). The rear balcony areas are relatively small in dimension and address a rear service lane. There is no change proposed to these balcony areas by way of screening or other mechanisms. Any screening devices or enclosure of these balcony areas would unreasonably compromise the occupants access to light and air.

The development satisfies this objective.

Objective 3) To encourage awareness of neighbourhood security

Comment:

The existing building remains unchanged and allows for suitable opportunities for passive and casual surveillance to neighbouring properties and the public domain.

4.2.5.4 Car Parking and Access

The existing building contains a mix of commercial tenancies on the lower levels and residential apartments on the upper floors.

The MDCP 2013 does not contain a car parking rate for tourist and visitor accommodation. There is no ability for additional car parking to be provided on site beyond that of the existing and approved car parking provided for the residential component of the building. Given the short term nature of the proposed land use in comparison to the existing and approved residential dwelling land use it is considered that the existing car parking arrangements and allocation of spaces to the residential component of the building will suffice.

Further, it is noted that the subject site is located within Manly Town Centre and within close proximity to the public transport hubs located on and adjacent to Manly Wharf. This location and access to public transport will further support the travel needs of those utilising the tourist and visitor accommodation.

A condition has been included in the recommendation of this report requiring the car parking for the tourist and visitor accommodation units to be clearly marked, sign posted and allocated in accordance with existing approvals.

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.

Applicants requested condition of consent

As detailed earlier within this report the applicant has requested the imposition of the following condition of consent:

'The consent for the use of the eight (8) residential units for tourist and visitor accommodation shall be limited to a period of ten (10) years unless extended in writing by Council by way of a section 96 application or further development application. At the expiration of the consent, the premises shall automatically revert back to residential dwellings. If an application is made to extend the period of the consent at least 3 months prior to expiration, the use as tourist and visitor accommodation shall be permitted to continue until such time that the subject application is finally determined.'

A review of the proposed condition fails to satisfy the 'Newbury test' in so far as the proposed condition is not considered to have a planning purpose in this instance and is therefore not a reasonable condition to impose on a consent.

The basis for this is that the applicant can, at any time and by way of a separate development application, seek to extinguish the use of the apartments as tourist and visitor accommodation and revert back to residential dwellings which negates the need for any time limited condition of consent to be imposed.

Therefore the condition requested has not been included in the recommendation of this report.

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 DA2018/0069 for Change of use to tourist and visitor accommodation on land at Lot 1 DP 1034722, 42 North Steyne, 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
DA01	10/01/18	Woodhouse & Danks Architects
DA02	10/01/18	Woodhouse & Danks Architects
DA03	10/01/18	Woodhouse & Danks Architects
DA04	10/01/18	Woodhouse & Danks Architects
DA05	10/01/18	Woodhouse & Danks Architects
DA06	10/01/18	Woodhouse & Danks Architects
DA07	10/01/18	Woodhouse & Danks Architects
DA08	10/01/18	Woodhouse & Danks 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. Approved Land Use

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of 'tourist and



visitor accommodation'

Tourist and visitor accommodation is defined as:

"tourist and visitor accommodation means a building or place that provides temporary or short-term accommodation on a commercial basis"

(development is defined by the Manly Local Environment Plan 2013 (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)

3. Prescribed Conditions

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

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

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



the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

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

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

Reason: Legislative Requirement (DACPLB09)

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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



\$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

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

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



area for any wastewater system and is separate from any onsite stormwater management system.

- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

5. **Maximum occupancy**

The maximum occupancy of each apartment is to be limited to the following:

- Maximum of 2 adults and 1 child to each double room; and
- Maximum of 1 adult and 1 child to each single room.

Reason: To maintain amenity.

6. **Maximum length of stay**

The maximum permitted length of stay is up to 3 months.

Reason: To ensure compliance with Manly Local Environmental Plan 2013.

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

7. **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.

8. **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)

9. **Privacy screen**

A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost northern edge of the rear balcony located off Unit 2 as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved



development.

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

Reason: In order to maintain privacy to the adjoining / nearby property.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

10. **Waste Management During Development**

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

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

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

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

11. **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)

12. **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)

13. **Operational Plan of Management**

A Plan of Management must be submitted and approved by the consent authority prior to the issue of an Occupation Certificate for visitor and tourist accommodation. The Plan of Management must address the following:



- (i) The appointment of a building manager and their contact details;
- (ii) A schedule providing proof of compliance/ongoing monitoring with the standards of this Policy, for example, occupancy rate for each sleeping room, provision of communal areas and sanitary facilities, and access and facilities for persons with disabilities;
- (iii) Provisions to ensure that guests do not exceed the approved maximum period of stay;
- (iv) Nominate the maximum occupancy of each apartment based on the maximum approved occupancy rates (maximum occupancy rates determined as follows: each double sleeping room is to be occupied by a maximum 2 adults and 1 child, each single room is to be occupied by a maximum 1 adult and 1 child);
- (v) Measures to ensure that guest numbers do not exceed those approved;
- (vi) Measures to minimise unreasonable impact to the habitable areas of adjoining premises;
- (vii) Proposed staffing arrangements, including location and contact details of the building manager and servicing of apartments (i.e. waste collection and cleaning/housekeeping);
- (viii) Security measures to restrict unauthorised after-hours access to the building (eg intercom system, mechanical locking devices, building management system, card access, or digital detection and evidence-capture);
- (ix) House rules (eg guest behaviour, activities and noise, consumption of alcohol, waste management, waste storage locations, a visitor policy and responsibilities of occupants during stay (i.e. waste removal and adherence to maximum occupancy); and
- (x) Waste minimisation, management, storage and collection procedures (waste is to be stored internally in accordance with the approved plans).

Reason: To ensure the ongoing management of the tourist and visitor accommodation.

14. Visitor Parking

Car parking spaces to serve the tourist and visitor accommodation must be permanently available and clearly marked. The spaces allocated to the tourist and visitor accommodation must be consistent with the spaces allocated to the residential component of the existing approval applying to the land.

Reason: To ensure visitor car parking is available at all times and is clearly identified.

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

15. 24 hour contact - building manager

A 24-hour telephone line is to be set up for neighbours to call to alert the building manager to disturbances caused by the users of the short term accommodation. The phone number is to be included in the Plan of Management.

Details of the phone line and building manager are to be signposted in a prominent location within common property in an area that is accessible at all times.

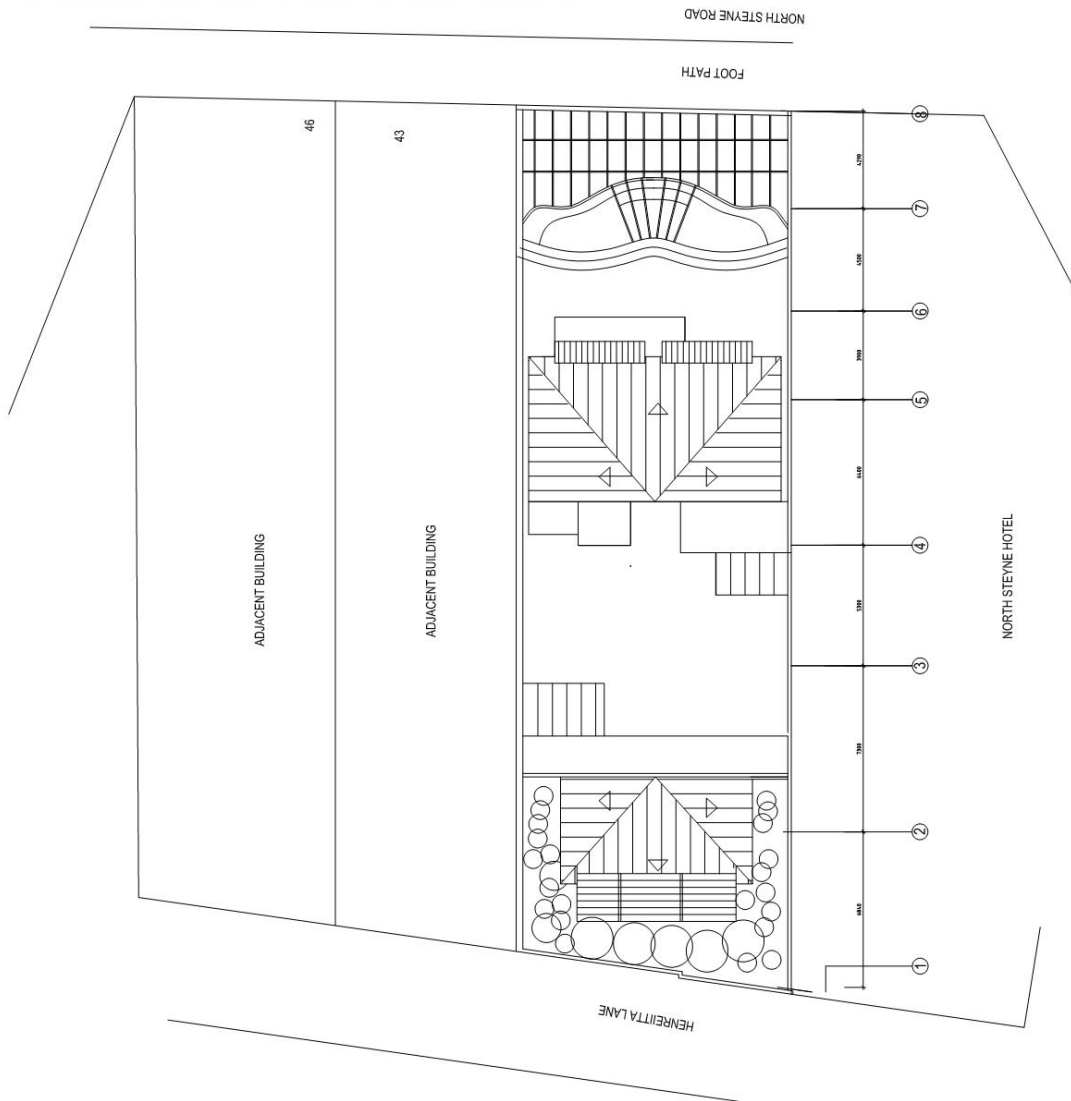
The Plan of Management is to be circulated to surrounding residents and objectors to the proposal. A register of complaints is to be kept by the manager and this register is to be made available to Council upon request.

Reason: To ensure the proposal does not result in unreasonable impacts on amenity.

In signing this report, I declare that I do not have a Conflict of Interest.



LOCATION MAP
42 NORTH STEYNE MANLY
google maps



GENERAL NOTES
1. CONTRACTORS MUST VERIFY ALL DIMENSIONS ON SITE PRIOR TO THE COMMENCEMENT OF WORK.
2. FINISHED DIMENSIONS TO BE USED IN PREFERENCE TO SCALED DIMENSIONS.
3. ALL DIMENSIONS TO BE GIVEN IN METRES.
4. DIMENSIONS TO BE GIVEN TO THE CENTRE OF THE BUILDING UNLESS OTHERWISE SPECIFIED.
5. DIMENSIONS TO BE GIVEN TO THE EXTERIOR FACE OF THE BUILDING UNLESS OTHERWISE SPECIFIED.
6. DIMENSIONS TO BE GIVEN TO THE INTERIOR FACE OF THE BUILDING UNLESS OTHERWISE SPECIFIED.
7. DIMENSIONS TO BE GIVEN TO THE EXTERIOR FACE OF THE BUILDING UNLESS OTHERWISE SPECIFIED.
8. DIMENSIONS TO BE GIVEN TO THE INTERIOR FACE OF THE BUILDING UNLESS OTHERWISE SPECIFIED.
9. DIMENSIONS TO BE GIVEN TO THE EXTERIOR FACE OF THE BUILDING UNLESS OTHERWISE SPECIFIED.
10. DIMENSIONS TO BE GIVEN TO THE INTERIOR FACE OF THE BUILDING UNLESS OTHERWISE SPECIFIED.

NO. DATE REVISION OR ISSUE

1 10/01/18 Issued for DA

2 10/01/18 Issued for DA

3 10/01/18 Issued for DA

4 10/01/18 Issued for DA

5 10/01/18 Issued for DA

6 10/01/18 Issued for DA

7 10/01/18 Issued for DA

8 10/01/18 Issued for DA

9 10/01/18 Issued for DA

10 10/01/18 Issued for DA

North Steyne Apartments
42 North Steyne Road
Manly

SITE PLAN & LOCATION MAP

WOODHOUSE & DANKS
ARCHITECTS
Level 2, 20 Dale Street, Brookvale NSW 2100
T: (02) 9393 9810
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JOB No. 18001
DWG No. DA01
SCALE 1:2000
DATE 10/01/18
DRAWN BY C. Kelly



4.0 REVIEW OF DETERMINATIONS

ITEM 4.1	REV2018/0008 - 13 A UPPER GILBERT STREET, MANLY - REVIEW OF DETERMINATION OF APPLICATION DA0240/2017 FOR ALTERATIONS AND ADDITIONS TO AN EXISTING RESIDENTIAL FLAT BUILDING
REPORTING OFFICER	RODNEY PIGGOTT
TRIM FILE REF	2018/463565
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is a review of a determination or decision made by a local planning 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. REV2018/0008 for Review of Determination of Application DA0240/2017 for alterations and additions to an existing residential flat building at Lot CP SP 9475, 13 A Upper Gilbert Street, Manly subject to the conditions and for the reasons set out in the Assessment Report.



REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2018/0008
Responsible Officer:	Benjamin Price
Land to be developed (Address):	Lot CP SP 9475, 13 A Upper Gilbert Street MANLY NSW 2095
Proposed Development:	Review of Determination of Application DA0240/2017 for alterations and additions to an existing residential flat building
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Local Planning Panel
Land and Environment Court Action:	No
Owner:	Proprietors of Strata Plan 9475
Applicant:	Brett Kelly
Application lodged:	20/04/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	15/05/2018 to 31/05/2018
Advertised:	Not Advertised
Submissions Received:	12
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,687,859.00

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

Environmental Planning and Assessment Act 1979 - Section 82A - Environmental Planning and Assessment Act 1979 - Section 82A

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.3 Maintenance of Views

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 CP SP 9475 , 13 A Upper Gilbert Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of a four (4) lot strata title allotment located on the southern side of 13a Upper Gilbert Street Manly. The property has a frontage of 1.07m to West Esplanade and a frontage of 27.685m to Upper Gilbert Street. The property has an average depth of 14.6m and an overall site area of 442.7sqm. The access handle to west esplanade is not in use. Access to the site is gained from Upper Gilbert Street via an existing driveway to an existing hardstand space to the side of the existing residential flat building. The property is relatively flat.</p> <p>The surrounding area predominantly consists of residential accommodation and includes a residential flat building to the west, a dwelling house and a residential flat building to the south and a residential flat building to the east.</p>

Map:



SITE HISTORY

DA005/2017 Alterations and additions to the existing residential flat building – Council requested the application be withdrawn due to non-compliances that could not be supported by Council. The applicant subsequently withdrew this application.

DA240/2017 - Alterations and additions to the existing building to provide 3 apartments with the addition of an upper floor and garage/carstacker parking arrangement for 5 vehicles.

- The proposal included:

Level 00

- Internal alterations to create a 2 bedroom dwelling with open plan dining, living, kitchen, study and attached terrace.

Level 01

- Internal alterations to create a 2 bedroom dwelling with open plan dining, living, kitchen, study and attached balcony.

Level 02

- Demolition of existing roof and upper floor addition to create a 2 bedroom dwelling with study laundry, bathroom and open plan dining, living and kitchen.

External

- Demolition of western stairs and construction of an integrated access on the eastern side of the building.
- Façade treatment of pre-cast concrete columns to allow for vertical planters.
- Alterations to windows and installation of southern facing doors on Level 00.

Site

- Construction of a 5 car mechanical stacking garage with turntable and driveway.
- Demolition of part of front boundary wall.



- Landscaping.

The application was refused by the Northern Beaches Independent Assessment Panel for the following reason:

"1. The proposed development is considered contrary to Section 79C(1)(a)(i)(ii),(b),(c),(d) and (e) having regard to the unacceptable visual bulk and scale of the ancillary car stacker structure and the impacts caused by the siting of this structure to the immediate adjoining properties to the south."

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for a review of DA240/2017. The application to review includes the following amendments to the car stacker garage, to address the issues raised:

- Increase in rear setback from 2.471 to 3.071
- Reduction in front setback from 6m to 5.4m
- Reduction in height from 4.75m to 3m
- Reduction in number of car parking spaces from 5 spaces to 3 spaces

There are no proposed changes to the residential flat building (RFB) in this review as no issues were raised in the Notice of Determination. As such this assessment adopts the assessment and recommendation of the Residential Flat Building conducted under DA240/2017. This assessment has considered the amendments to the ancillary car stacker structure with regard to the relevant legislation below.

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:

In accordance with Section 82A of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 82A of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 14 February 2018 and the notice of determination was issued on 16 February 2018. The review was lodged on 20 April 2018 and is to be considered by Northern Beaches Local Planning Panel on 1 August 2018, which is within 6 months of the date of determination.

Section 82A(4)(c) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the 'Detailed Description of Works' section of this report.



A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the S82 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 82A (4) (c) of the Act

Section 4.15 Assessment

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	Mainly 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 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 documentation was submitted with the original 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 clause is not relevant to this application.</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.</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</p>



Section 4.15 'Matters for Consideration'	Comments
	addressed via a condition. 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. 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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "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 12 submission/s from:

Name:	Address:
Ms Anita Joy Langborne	Po Box 1107 MANLY NSW NSW 1655
Mrs Tanya Reid	3/87-88 West Esplanade MANLY NSW NSW 2095
Mr David Reid	3/87-88 West Esplanade MANLY NSW NSW 2095



Name:	Address:
Mr Tom Griffin	6/87-88 West Esplanade MANLY NSW 2095
Mr Errol Gordon Simper	4 / 86 West Esplanade MANLY NSW 2095
Mr Stuart Edmond	2 / 86 West Esplanade MANLY NSW 2095
Ms Bridie Gough	12 Upper Gilbert Street MANLY NSW 2095
Mrs Lorraine Edmond	2 / 86 West Esplanade MANLY NSW 2095
Ms Daphne Sider	4 / 87 West Esplanade MANLY NSW 2095
Ms Annika Helen Griffin	6/87-88 West Esplanade MANLY NSW 2095
Mr Tadeusz Przylucki	6 / 86 West Esplanade MANLY NSW 2095
3/87 West Esplanade Pty Ltd	108 Hibbard Drive PORT MACQUARIE NSW 2444

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

- Privacy impacts and reliability of car stacker
- Acoustic privacy impacts of lift
- Setbacks and visual bulk
- SEPP 65
- Alterations and additions
- Sunlight Access
- Views
- Bulk, scale and overdevelopment of the site
- Crepe Myrtle
- In support

The matters raised within the submissions are addressed as follows:

- Acoustic privacy impacts and reliability of car stacker
Comment:
A condition of consent has been recommended to ensure the car stacker does not produce noise in excess of 5dBa above background noise at the nearest residential receiver. The proposed car stacker subject to the conditions of consent will not result in any unreasonable impacts on the neighbouring properties. Councils traffic engineer has also recommended a condition to ensure the maintenance of the car stacker.
- Acoustic privacy impacts of lift
Comment:
A condition of consent has been recommended to ensure the lift does not produce noise in excess of 5dBa above background noise at the nearest residential receiver.
- Setbacks and visual bulk
Comment:
The amendments have significantly reduced the bulk and scale of the car stacker. The proposed car stacker as amended is not of an unreasonable bulk or scale within the locality. The proposed setbacks have been assessed below with regard to the objectives of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation. In summary the setbacks were found to be acceptable.



- SEPP 65 Design Quality of Residential Apartment Development
Comment:
This legislation is not applicable to this development
- Alterations and additions
Comment:
This application relates to the amendments to the garage. The original application was assessed with regard to the planning principle relating to demolition (Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187) in order to establish whether the proposed development is classified as alterations and additions or new development. The assessment found that the proposal is accurately described as alterations and additions.
- Sunlight Access
Comment:
The proposal has been assessed below with regard to Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013. In summary the proposal was found to maintain adequate access to sunlight within the locality.
- Views
Comment:
The proposal has been assessed below with regard to the views planning principle established by the NSW Land and Environment Court. In summary the proposal was found to not result in any unreasonable loss of views within the locality.
- Bulk, scale and overdevelopment of the site
Comment:
The proposal is compliant with the Height of Buildings and Floor Space Ratio development standard of the Manly LEP 2013. These standards control the bulk and scale of developments. The amended design is of an acceptable bulk and scale within the locality and is not considered to be an overdevelopment of the site
- Crepe Myrtle
Comment:
The arborist report and the conditions from Councils Landscape Officer have been included in this determination. Subject to the conditions of consent, the proposal will not result in any unreasonable impacts on the adjoining Crepe Myrtle.
- In support
Comment:
Support for the application is noted.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire	The application has been investigated with respects to aspects



Internal Referral Body	Comments
and Disability upgrades	<p>relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p> <p>Change of Use/Fire Safety Upgrade The existing levels of fire safety within the premises are to be upgraded to achieve an adequate level of fire safety in accordance with the provisions of clause 94 of the Environmental Planning and Assessment Regulation 2000. The fire safety upgrading works are to be included in the Construction Certificate and be implemented prior to occupation of the new building or part. Reason: To ensure adequate provision is made for fire safety in the premises for building occupant safety.</p>
Landscape Officer	The landscape proposal is generally acceptable subject to completion of landscaping and the protection of trees.
NECC (Development Engineering)	Development Engineer has no objection to the application subject to the following condition of consent.
Strategic & Place Planning (Heritage Officer)	<p>Further to a review of the available documents and site visit,</p> <p>The site of proposed development is not a listed heritage item in its own right, however, it is located in the vicinity of heritage items, notably including the stone kerbs and the natural items (park and trees across the road).</p> <p>Given the nature of the proposal and the items, impact on heritage values is assessed as acceptable.</p> <p>Based on the above, I have no objections to this proposal from heritage perspective.</p> <p>Zoran Popovic Heritage adviser Land Use Planning</p>
Traffic Engineer	the development proposal for 3 units providing offstreet parking for 3 vehicles within a car stacker is an improvement on the existing



Internal Referral Body	Comments
	situation which provides offstreet parking of 3 compliant spaces for 4 units. In terms of traffic generation the amount of generated traffic is low and although vehicles are unable to turn around on site to egress in a forwards direction this is considered acceptable given the low number of vehicle movements generated from the site and the low traffic volumes on the on the street frontage.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period. The advice provided for DA240/2017 has been included as a consent document for this recommendation.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 779485M_03).

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

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	DA240/2017	Proposed	% Variation	Complies
Height of Buildings:	11m	RFB 9.2m - 9.6m	RFB No change Garage - 3m	N/A	Yes



		Garage 4.7m - 4.9m			
Floor Space Ratio	0.75:1 332.025sqm	0.67:1 297.75sqm	No change	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 442.7	Requirement	DA240/2017	Proposed	% Variation*	Complies
4.1.1 Dwelling Density	150sqm of site area per dwelling	147sqm of site area per dwelling	No change	2%	No
4.1.2.1 Wall Height	East 9m West 9m	East 9.236m West 9.15m	No change	N/A	No
4.1.2.2 Number of Storeys	3	3	No change	N/A	Yes
4.1.4.1 Street Front Setbacks	6m	RFB 1.875m- 3.4m Garage 6m	RFB No Change Garage 5.4m	10%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	East RFB 3.1m Garage 1m West 3.05m	East RFB 7.6m Garage Nil West RFB 2.5m-3m	East RFB No change Garage Nil West RFB No change	100%	No
4.1.4.4 Rear Setbacks	8m	RFB 2.4m- 2.7m Garage 2.4m	RFB No change Garage 3m	62.5%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2	Open space 50% of site area (221.35sqm)	Nil	5.1% (23sqm)	89.6%	No
4.1.5.1 Open Space	Max. 40% of Total	23.18sqm	No	N/A	No



Above Ground	Open Space (0sqm)		change		
4.1.5.2 Landscaped Area	Landscaped area 30% of open space (6.9sqm)	123.6sqm	125.7sqm	N/A	Yes
4.1.5.2 Minimum tree plantings	1	1	No change	N/A	No, subject to conditions
4.1.5.3 Private Open Space	12sqm	Unit 1 23sqm Unit 2 23sqm Unit 3 Nil.	No change	100%	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 (6.2m)	6.1m	6.1m	N/A	Yes
Schedule 3 Parking and Access	Resident 4 Visitor 1	Resident 5 Spaces Visitor Nil	3 spaces	Resident 25% Visitor 100%	No
4.4.5 Earthworks (excavation and filling)	1m	2.3m	No Change	130%	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.9 Mechanical Plant Equipment	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
5.4.1 Foreshore Scenic Protection Area	Yes	Yes



Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Merit consideration:

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

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

Comment:

The proposal has been assessed below and was found to allow for adequate sunlight to penetrate the private open spaces, windows to living spaces/habitable rooms of both the development and the adjoining properties. The proposal will maintain an equitable access to light and sunshine within the locality.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

The proposed changes significantly reduce the height of the garage structure and allow 87 and 86 West Esplanade Greater access to light and sunshine than the original application.

The overshadowing to 86 West Esplanade is predominantly to the courtyard at the rear and the north facing windows. The courtyard is currently significantly overshadowed by this properties existing garage to the north of the residential flat building. The proposal will not eliminate more than 1/3 of the existing sunlight accessing the private open space between the hours of 9am to 3pm of the winter solstice. The northern facing windows will retain adequate access to light in the morning and during midday of the winter solstice. The application was also accompanied by equinox shadow diagrams. These diagrams demonstrate that the courtyard and the northern facing windows of 86 west esplanade will retain good access to sunlight during the morning and mid-afternoon of the equinox. The overshadowing of 86 West Esplanade due to the proposed development is not unreasonable. The proposal will allow adequate sunlight to penetrate the private open spaces and windows to habitable rooms.

The building at 87-88 West Esplanade will receive additional overshadowing to the private open spaces and the eastern and northern facing windows due to the development. The changes under this review have reduced the overshadowing of the northern and eastern facing windows of unit 6 and the eastern facing window of unit 3. The changes have also reduced the overshadowing of the communal open space in the north-east of 87-88 West Esplanade. The northern facing windows are to the bedrooms, bathrooms and sunrooms of the building. The main living areas have eastern facing windows. The development will retain the solar access to these windows with the exception of the ground floor unit which will receive minor additional overshadowing. The proposed development will maintain adequate sunlight to penetrate the living rooms of the development site. The proposed development will allow adequate solar access to windows to habitable rooms and habitable spaces of 87-88 West Esplanade. The proposal will not remove 1/3 of the existing sunlight accessing the private open spaces of 87-88 West Esplanade. The proposed development will allow adequate sunlight to access the private open spaces of 87-88 West Esplanade.



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

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

Comment:

The proposal will maximise the penetration of mid winter sunlight to the windows, living rooms and principal outdoor areas.

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

3.4.3 Maintenance of Views

Description of non-compliance

The proposed garage will result in the loss of views from unit 6 and unit 3 87-88 West Esplanade Manly to the heritage item I237 Reserve Park.

Merit consideration:

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

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Comment:

The proposal will allow for adequate view sharing for both existing and proposed development.

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

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

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



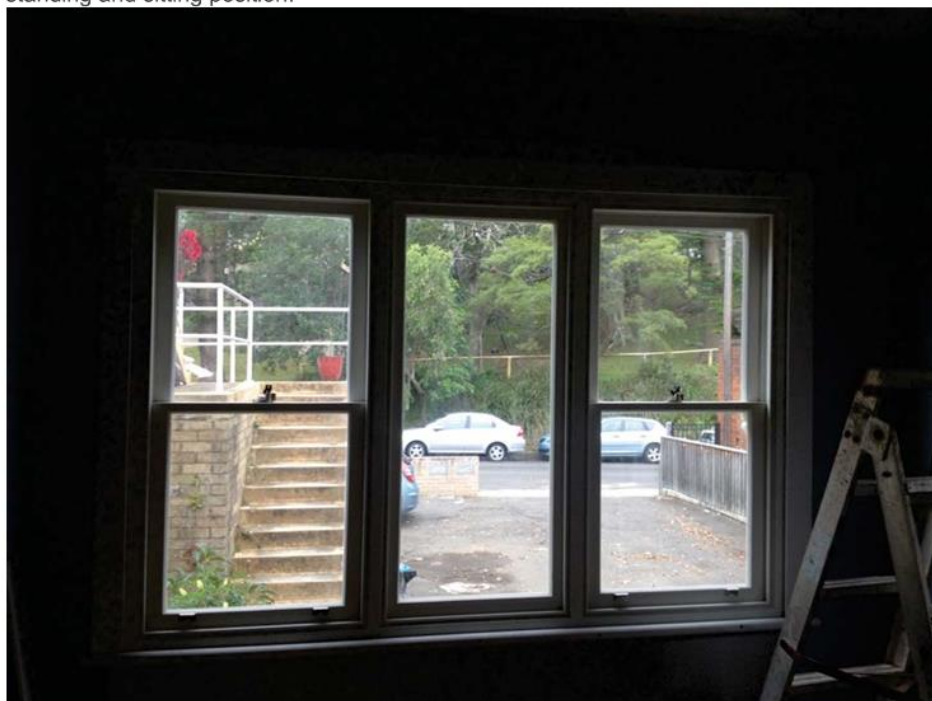
Comment:

The proposal will result in the loss of views from unit 6 87-88 West Esplanade Manly to the local heritage item I237 Reserve Park.

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

Comment:

The views from 87-88 West Esplanade are obtained from looking across the rear boundary from both a standing and sitting position.



View from sitting room of 6/87-88 West Esplanade

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

Comment:

The views will be lost due to the consolidated entry and the car stacker garage. The proposed changes in



this review will result in a minor reduction in the loss of views from unit 6 87-88 West Esplanade Manly to the heritage item I237 Reserve Park to that proposed in the original application. The window to the sitting room was surveyed to have height of 16.5 to 18. The revised garage has an RL of 17.7. The sitting room will retain a small corridor of views to the heritage item between the car stacker garage and the consolidated entry and over the top of the car stacker. The view loss is most accurately described as moderate.

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Comment:

The proposal is not compliant with the rear setback. However, compliance would not result in any significant reduction of view loss. The proposed consolidated entry is compliant with the side setback control. The proposed garage is not compliant with the side setback control. However if the garage was to comply with the side setback control it would most likely obstruct the view corridor and result in the obliteration of views from 6/87-88 West Esplanade. The proposal is a reasonable development, the view impact from 6/87-88 West Esplanade is acceptable and the view sharing is reasonable.

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

Comment:

The proposed development has been assessed with regard to its non-compliances and found to be satisfactory. The proposal will result in an acceptable level of view loss.

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

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

Description of non-compliance

The proposed car stacker garage is not compliant with the front setback, side setback and rear setback control of the Manly DCP 2013.

Merit consideration:

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

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



Comment:

The proposed car stacker is setback 5.4m from the front boundary and has a nil setback to the side boundary. The proposed car stacker is directly adjacent to the three car garage at 86 West Esplanade. This garage is located on the front boundary and the side boundary adjoining 13A Upper Gilbert Street Manly. The proposed setback of the car stacker will maintain the spatial proportions of the street and will not result in any unreasonable impacts on the streetscape or landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposal, subject to conditions, will not result in any unreasonable impacts on the amenity of the locality.

The existing parking arrangement is a hardstand area built to the rear and side boundaries. The proposed car stacker is a solid structure that will minimise overlooking of the properties to the side and rear and provides an increased rear setback to the parking. The car stacker is enclosed and a condition of consent has been recommended to ensure it does not result in any unreasonable acoustic privacy impacts. The proposed car stacker will not result in any unreasonable visual or acoustic privacy impacts in the locality.

The assessment under Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013 found that the proposal will maintain adequate access to light and sunshine within the locality.

The proposal has been assessed above with regard to the objectives of Clause 3.4.3 Maintenance of Views of the Manly DCP 2013 and the Views planning principle established by the NSW Land and Environment Court. The assessment found that the proposal will not result in any unreasonable loss of views within the locality.

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

Comment:

The proposed flexibility is satisfactory in this circumstance.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*



- ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.

Comment:

The proposal will enhance the natural features of the site and includes good landscaping including planting in deep soil zones.

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

Comment:

Not applicable.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The proposal is not compliant with Clause 4.1.5 Open Space and Landscaping due to the proposed total open space, private open space and above ground open space. The proposed review will increase the total open space from nil to 23sqm due to the increased rear setback of the car stacker garage. This is due to the requirement for total open space to have a minimum horizontal dimension of at least 3m measured in any direction, and a minimum unbroken area of 12sqm. It also noted that the proposal will provide 125.7sqm of landscaped area an increase of 2.1sqm of landscape area to the original application. This area is mostly at a minimum horizontal dimension of 2.5m.

Merit consideration:

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

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

Comment:

The existing site does not contain any important landscape features or vegetation. The proposal includes adequate landscaping to augment native vegetation on the site.

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

Comment:

The proposal will increase the landscaped open space from the existing situation (from 61.5m² to 125.7sqm) and provides good landscaping of the site.



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

Comment:

The proposal has been assessed above with regard to amenity and was found to achieve an acceptable level of amenity for the site streetscape and surrounding area.

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

Comment:

The proposal will increase the porous landscaped area on the site from the existing situation. The proposal has been appropriately conditioned to ensure stormwater run-off is appropriately disposed.

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

Comment:

The proposed landscaping is adequate to minimise the spread of weeds and the degradation of private and public open space.

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

Comment:

The proposal is adequately landscaped to maximise wildlife habitat and the potential for wildlife corridors.

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

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

Description of non-compliance

The Manly DCP 2013 requires 4 resident parking spaces and 1 visitor parking space for this development. The original application included 5 resident parking spaces. The application to review has been amended to include 3 resident parking spaces.

Merit consideration:

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

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



Comment:

The existing development on the site provided 3 parking spaces for 4 units. The proposed development will provide 3 parking spaces for 3 units. This is an improvement on the existing situation. Furthermore the site is located in close proximity to major bus routes and the Manly Wharf. Given the locality the proposed parking is adequate to service the development site. The proposed parking is at grade and is accessible from the RFB.

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

Comment:

The proposal will reduce the demand for on-street parking through the reduction of one unit on the site. The proposed revised design of the parking structure has a reduced bulk, scale and subsequently has reduced amenity impacts on the neighbouring properties. The exception to the parking requirements is appropriate in this circumstance to minimise the impacts of the structure on the streetscape and the neighbouring properties.

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.

Comment:

The proposed car stacker garage is of a significantly reduce bulk and scale from the original design. This structure will not have an unreasonable impact on the amenity of the neighbouring properties or the streetscape. The proposed car stacker is appropriately located to minimise its visual impact on the streetscape and the neighbouring properties. The vehicular access is convenient, safe and integrated into the design to minimise the visual impact on the 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.

Comment:

The proposed excavation for the car parking was supported by a geotechnical report that demonstrated the development could be carried out without any unreasonable impacts to the locality.

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

Comment:

The proposal will utilise the existing location of the driveway crossover. Appropriate conditions have been recommended to ensure the driveway crossing is appropriately designed. The proposal will minimise the width and number of footpath crossings.

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.

Comment:



The proposal will reduce the existing impervious parking area and is adequately landscaped to screen internal accesses.

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.

Comment:

The proposal is not located within the B2 Local Centre Zone. However, the proposal is in close proximity to this zone and is well serviced by public transport. The proposal limits parking provision and provides compliant bicycle storage to encourage the use of public transport and bicycle use.

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

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.

Other Matters

The application was refused by the Northern Beaches Independent Assessment Panel for the following reason:

"1. The proposed development is considered contrary to Section 79C(1)(a)(i)(ii),(b),(c),(d) and (e) having regard to the unacceptable visual bulk and scale of the ancillary car stacker structure and the impacts caused by the siting of this structure to the immediate adjoining properties to the south."

The application to review includes the following amendments to the car stacker garage, to address the reason for refusal:

- Increase in rear setback from 2.471 to 3.071
- Reduction in front setback from 6m to 5.4m
- Reduction in height from 4.75m to 3m
- Reduction in number of car parking spaces from 5 spaces to 3 spaces



The proposal does not include any amendment to the design of the Residential Flat Building.

The assessment above has found that the proposed car stacker garage will not result in an unacceptable visual bulk or scale nor will the amended siting of the structure result in any unreasonable impacts to the immediate adjoining properties to the south. The amended design has adequately addressed the reason for refusal. As such, the proposal is recommended for approval

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 REV2018/0008 for Review of Determination of Application DA0240/2017 for alterations and additions to an existing residential flat building on land at Lot CP SP 9475, 13 A Upper Gilbert Street, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other condition



of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A-DA-002 Site Plan Amendment E	26/03/2018	Chenchow Little Pty Ltd
A-DA-101 Level 00 Plan Amendment E	26/03/2018	Chenchow Little Pty Ltd
A-DA-102 Level 01 Plan Amendment E	26/03/2018	Chenchow Little Pty Ltd
A-DA-103 Level 02 Plan Amendment E	26/03/2018	Chenchow Little Pty Ltd
A-DA-104 Roof Plan Amendment E	26/03/2018	Chenchow Little Pty Ltd
A-DA-201 North Elevation Amendment E	26/03/2018	Chenchow Little Pty Ltd
A-DA-202A East Elevation Amendment E	26/03/2018	Chenchow Little Pty Ltd
A-DA-203 South Elevation Amendment E	26/03/2018	Chenchow Little Pty Ltd
A-DA-204 West Elevation Amendment E	26/03/2018	Chenchow Little Pty Ltd
A-DA-301 Section A-A Amendment E	26/03/2018	Chenchow Little Pty Ltd
A-DA-302 Section B-B Amendment E	26/03/2018	Chenchow Little Pty Ltd
A-DA-303 Driveway Section Amendment E	26/03/2018	Chenchow Little Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
RE:DA240/2017 – 13A Upper Gilbert Street – Alterations and additions to an existing residential flat building	7 November 2017	Ausgrid
Traffic Impact Assessment	March 2018	Traffix traffic and transport planners
Access Report	September 2017	Code Performance
Arboricultural Impact Assessment Report	28 September 2017	Earthscape Horticultural Services
Geotechnical Investigation	29 September 2017	JK Geotechnics
BASIX Certificate Number 779485M_03	13 October 2017	Damian O'Toole Town Planning P/L

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
L100C Landscape Concept Plan Issue C	14 September 2017	Spirit Level Designs Pty Ltd

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. Amendments to the approved plans

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

- o The proposed *Tristanopsis laurina* "Luscious (Water Gum) is to be deleted from the plans.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land. (DACPLB02)

3. Prescribed Conditions

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

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



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

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

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

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

Reason: Legislative Requirement (DACPLB09)

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be



maintained in a safe and clean state until such time as new construction works commence.

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools



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

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

FEES / CHARGES / CONTRIBUTIONS

5. Security Bond

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

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

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

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

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

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

6. Stormwater Disposal

Stormwater shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Council's specification are to be submitted to the Principal Certifying Authority for approval prior to the issue of the Construction Certificate.

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



7. Vehicle Crossings Application

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

Reason: To facilitate suitable vehicular access to private property

8. Construction Traffic Management Plan

That a Construction Traffic Management Plan be prepared and provided to Council for review.

Reason: To ensure construction traffic is appropriately managed throughout the development works. (DACTRCPC2)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

9. 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.

10. Tree protection

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

i) all trees and vegetation within the site, nominated on the plans for retention, shall be protected during all construction stages, excluding exempt trees under the relevant planning instruments or legislation,

ii) all other trees and vegetation located on adjoining properties, with specific reference to tree protection measures for T1 Lagerstroemia indica, as reported in the Arboricultural Impact Assessment prepared by Earthscope Horticultural Services

iii) all road reserve trees and vegetation.

B) Tree protection shall be undertaken as follows:

i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4, and as listed in the Arboricultural Impact Assessment

ii) any tree roots exposed during excavation with a diameter greater than 50mm within the TPZ must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,



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

iv) no tree roots greater than 50mm diameter are to be cut from protected trees unless authorized by the Project Arborist on site,

v) all structures are to bridge tree roots greater than 50mm diameter unless directed by a AQF Level 5 Arborist on site,

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

Reason: To ensure the trees conditioned to be retained are suitably protected during any construction works.

11. **Works Zone**

Should a Works Zone be required an application on Council's Standard Works Zone application form shall be submitted no less than 2 weeks in advance of the date the Works Zone is required.

Reason: To ensure sufficient time for processing, assessment & installation of Works Zone. (DACTRDPC1)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. **Vehicle Crossings**

The provision of a vehicle crossing 3.5 metres wide at kerb and 5.5 m wide at boundary in accordance with Northern Beaches Council Drawing No A4-3330/1 N and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property

13. **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.

14. **Maintenance of Sediment**

Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.



Reason: To ensure sediment controls are effective

15. Acid Sulfate Soil Management

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

Reason: To ensure potential Acid Sulfate Soil is appropriately managed. (DACPLEDW1)

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

16. Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development

17. Fire Safety Matters

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

18. Car Stacker Certification and Management

That the developer provide the appointed certifier with a copy of certification from the car stacker installer that it is installed and operating as per specification and that a plan of management for the ongoing operation and maintenance of the car stacker be prepared.

Reason: To ensure the car stacker is installed and maintained as per its specifications. (DACTRFPOC1)

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

20. Landscape maintenance

Landscaping is to be maintained in accordance with the approved Landscaping Plan.



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

21. **Acoustic Privacy**

The lift and mechanical car stacker shall not produce noise levels of more than 5dBa above background noise measured at the nearest residential window/opening at any time.

Reason: To ensure the amenity of the neighbouring properties. (DACPLGOG1)

22. **Car Stacker**

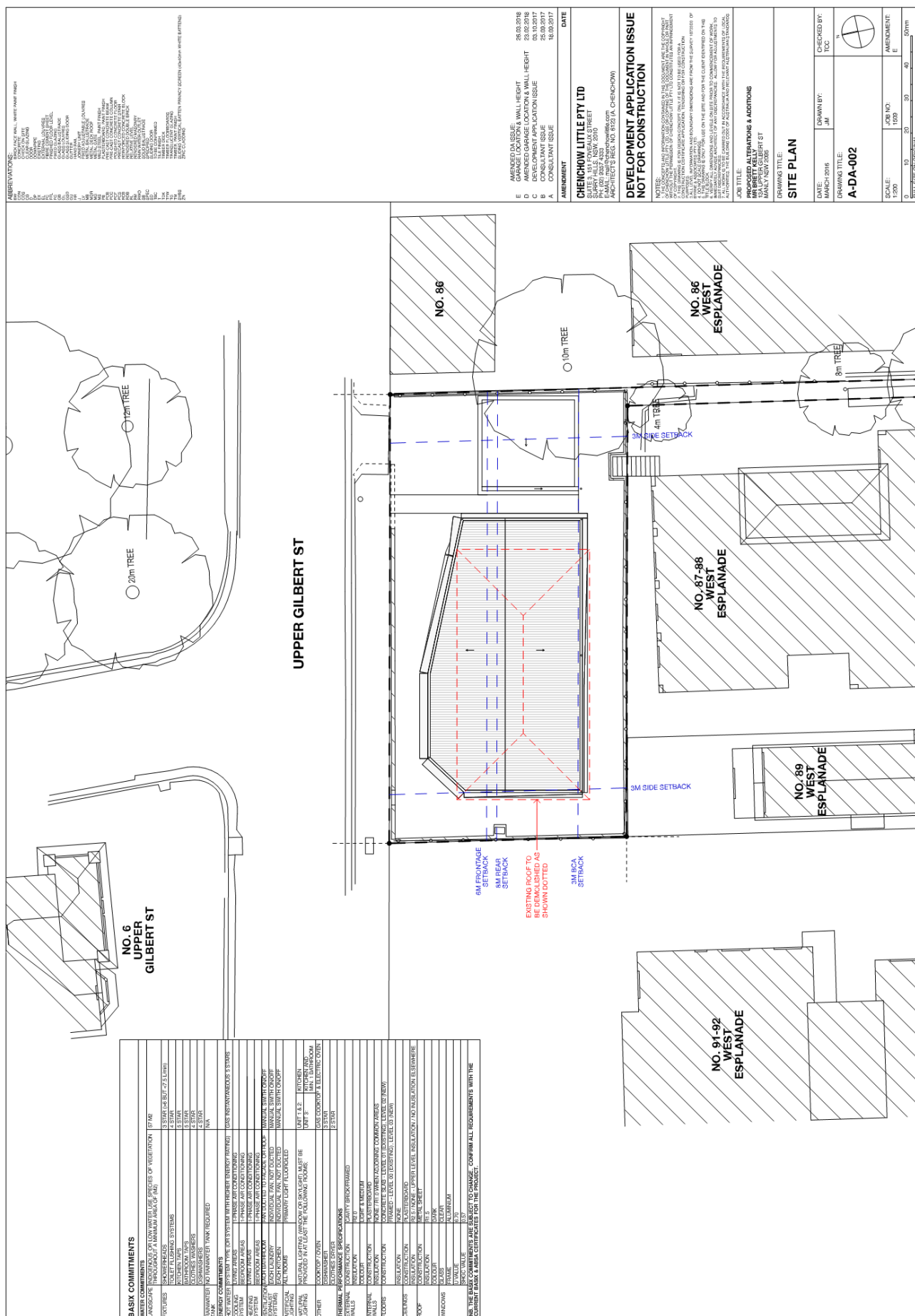
The car stacker is to remain operable for the life of the development.

Reason: To ensure on-going compliance with this consent. (DACPLGOG2)

23. **Sight Lines to Pedestrians**

That sight line splays to pedestrians at the property boundary in accordance with AS/NZS 2890.1 section 3.2.4(b) be provided and maintained.

Reason: To ensure adequate sight distance to pedestrians using the footpath. (DACTRGOG1)













5.0 PLANNING PROPOSALS

ITEM 5.1	PLANNING PROPOSAL PP0003/17 - 2-4 NOOAL STREET AND 66 BARDO ROAD, NEWPORT
REPORTING OFFICER	BRENDAN GAVIN
TRIM FILE REF	2018/391230
ATTACHMENTS	1 ↓ Council Report and Resolution for PP0003/17 2 ↓ Planning Proposal - PP0003/17 - 2 Nooal Street , 4 Nooal Street and 66 Bardo Road, Newport

PURPOSE

This Planning Proposal has been referred to the Northern Beaches Local Planning Panel for advice, in accordance with the Local Planning Panels direction for Planning Proposals.

SUMMARY

In September 2017 Northern Beaches Council received a Planning Proposal seeking to amend the Pittwater Local Environmental Plan 2014 to add Seniors Living as an Additional Permitted Use at 2-4 Nooal Street and 66 Bardo Road, Newport.

Council at its meeting of 27 November 2017 resolved to refuse the Planning Proposal and formally notified the applicant on 11 December 2018.

On the 28 of February 2018 the applicant sought a Rezoning Review with the Sydney North Planning Panel. At its meeting of 2 May 2018, the Planning Panel recommended that the Planning Proposal should be proceed subject to amendments.

On the 14 of June 2018 Council resolved to be the Relevant Planning Authority for the Planning Proposal. This means Council is now responsible of the preparation of a Planning Proposal and is required to submit it to the Department of Planning and Environment for a Gateway Determination.

In accordance with the Minister for Planning's Local Planning Panel Directions, the Planning Proposal must be referred to the relevant local planning panel first, before being forwarded to the Department of Planning and Environment and the Minister for a Gateway Determination. Subsequently the proposal has been prepared for the Panel's advice.

RECOMMENDATION OF MANAGER STRATEGIC AND PLACE PLANNING

That

- A. The Panel consider the Planning Proposal and provide advice to Council.
- B. Council then submits the Planning Proposal to the Department of Planning and Environment for a Gateway Determination with the advice from the Panel.

REPORT

BACKGROUND

Council received a Planning Proposal on 4 September 2017 to amend the Pittwater Local Environmental Plan 2014 (PLEP 2014) for land at 2-4 Nooal Street and 66 Bardo Road, Newport. The Planning Proposal sought to add an additional permitted use on the site through Schedule 1 of the PLEP to permit seniors housing. The subject properties would have retained their E4 Environmental Living Zoning.

Council at its meeting of 27 November 2017 resolved to refuse the Planning Proposal. Council resolved:

That

- A. Council does not submit the Planning Proposal lodged for 2-4 Nooal Street and 66 Bardo Road, Newport for a Gateway Determination for the following reasons:
 - a. It is inconsistent with the *Pittwater Local Planning Strategy (2011)*
 - b. It does not have strategic merit or site specific merit when assess in accordance with the NSW Planning & Environment's *Planning Proposal: A guide to preparing planning proposals (2016)*
 - c. It does not align with the goals and targets of the *Revised Draft North District Plan*.
 - d. It is inconsistent with the following State Environmental Planning Policies;
 - I. Housing for Seniors or People with a Disability
 - II. Coastal Protection
 - III. Draft Coastal Management
 - e. Is inconsistent with the following Local Planning Directions;
 - I. 2.1 – Environmental Protection Zones
 - II. 4.3 - Flood Prone Land
 - III. 7.1 – Implementation of the Metropolitan Strategy
 - IV. Draft Coastal Management Local Planning Direction.
 - f. It is inconsistent with the objectives of the E4 Environmental Living Zone in Pittwater Local Environmental Plan 2014.
 - g. It seeks to permit medium density residential development that is inconsistent with the established low density character of the area.
 - h. It would set an unacceptable precedent.
- B. The proponent and interested parties who made a submission be advised of Council's decision.

A copy of that Council Report is at **ATTACHMENT 1**

The applicant subsequently sought and was granted a Rezoning Review by the NSW Department of Environment and Planning. A proponent has 42 days from the formal notification of refusal to support a planning proposal to seek the review through the relevant planning panel. The request was accepted by the Department on 28 February 2018, being 60 days after Council notified the applicant it did not support the Planning Proposal. It is noted that periods may be extended over the Christmas and New Year's periods.

At its meeting of 2 May 2018, the Sydney North Planning Panel heard the matter. Council provided written commentary to the panel beforehand indicating their reasons for refusal and provided an oral submission on the day as to why it should not be supported. The following day the Panel determined the Planning Proposal should be proceed with substantial amendments that were not communicated or discussed previously. Rather than pursuing an amendment to Schedule 1 of the Pittwater Local Environmental Plan 2014 to introduce seniors housing as an additional permitted use the Panel supported a straight rezoning from E4 Environmental Living to R2 Low Density Residential, and a recommendation to investigate expanding the subject area to include 13 additional properties up to Irrubel Road.

Given the substantial changes proposed by the Sydney North Planning Panel, Council sought to be the Relevant Planning Authority (RPA) for this Planning Proposal. This means Council is now responsible for the preparation of a Planning Proposal, submitting it to the Department of Planning for a Gateway Determination, and its finalization and gazettal.

In accordance with the Minister for Planning's directions, the RPA must now submit a Planning Proposal to the relevant local council planning panel for advice, before it is submitted to the Department and Minister for a Gateway Determination. This direction was not in place when this Planning Proposal was first assessed by Council, and as such the Planning Proposal was not referred to the local planning panel at that time. The Minister's Direction came into effect on 1 June 2018, however it does apply to planning proposals prepared, but not submitted to the Minister, before 1 June 2018. As this proposal has not been submitted to the panel previously or the Minister, it must now be submitted to the Northern Beaches Local Planning Panel for advice.

Following the Northern Beaches Local Planning Panel providing advice on the Planning Proposal, it shall be forwarded to the Department of Planning and Environment for a Gateway Determination.

PLANNING PROPOSAL

The intended outcome of the Planning Proposal is to rezone 2 – 4 Nooal Street and 66 Bardo Road from E4 Environmental Living to R2 Low Density Residential. This is in line with the decision of the Sydney North Planning Panel on the 2 May 2018.

A copy of the Planning Proposal is at **ATTACHMENT 2**.

CONCLUSION

The Planning Proposal is prepared in accordance with the Department's *Guide to Preparing Planning Proposals* (August 2017) as well as the recommendations of the Sydney North Planning Panel. While Council previously resolved to not support the proposal, and has always opposed the proposal, it is now the Relevant Planning Authority and must comply with the direction of the Sydney North Planning Panel for the Planning Proposal to proceed.

CONSULTATION

This proposal was first placed on non-statutory public exhibition for 30 days from 16 September 2017 until 16 October 2017. During that time 28 submissions were received from the general public. Only four of the submissions supported the proposal, while one was neutral. The remaining 23 submissions objected to the proposal.

If the proposal was to proceed through Gateway and receive a determination to proceed, an additional round of statutory public exhibition would be undertaken for 28 days.

TIMING

It is anticipated that following the Northern Beaches Local Planning Panel providing advice on the proposal, it will be included with the proposal and forwarded to the Department of Planning and Environment for a Gateway Determination.

If the proposal receives a Gateway Determination to proceed, it is anticipated that it will take approximately 9 months to exhibit the proposal, finalize and then publish the proposed LEP amendment.

FINANCIAL CONSIDERATIONS

There are no substantive financial considerations with the preparation of the Planning Proposal.

ENVIRONMENTAL CONSIDERATIONS

The Planning Proposal is considered to have a negative outcome for the environment. The properties subject to the Planning Proposal are currently zoned E4 Environmental Living as they are subject to natural hazards while also valued by the community for their aesthetic qualities. The objectives of the E4 Environmental Living Zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors*

The proposed R2 Low Density Residential Zone has a different set of objectives and is clearly aimed at residential areas free from hazards or specific values and qualities that need to be preserved and enhanced. The objectives of this zone are

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

The proposed zoned would remove the aesthetic objectives of the original zone, as well as further weaken the strategic intent to allow development of a low scale and low impact, and enhance riparian and foreshore vegetation around Crystal Bay.

It is further noted that rezoning would provide for a seniors living development application to be lodged on the subject properties. This would allow for a medium density development of either multi-dwelling housing or residential flat buildings to be constructed on the site.

SOCIAL CONSIDERATIONS

This proposal is subject to community opposition. 23 submissions objecting to the proposal were received during the non-statutory public exhibition period from surrounding land owners as well as the Newport Residents Association.

GOVERNANCE AND RISK CONSIDERATIONS

Governance and risk considerations are standard procedural considerations in relation to actions arising from the recommendations of this report.



REPORT TO ORDINARY COUNCIL MEETING
ITEM NO. 10.8 - 28 NOVEMBER 2017

ITEM 10.8	PLANNING PROPOSAL (PP0003/17) 2-4 NOOAL STREET AND 66 BARDO ROAD, NEWPORT
REPORTING MANAGER	EXECUTIVE MANAGER STRATEGIC & PLACE PLANNING
TRIM FILE REF	2017/445529
ATTACHMENTS	1 Summary of Submissions (Included In Attachments Booklet) 2 External Referral Comments (Included In Attachments Booklet) 3 Internal Referral Comments (Included In Attachments Booklet)

EXECUTIVE SUMMARY

PURPOSE

To report upon the assessment of a Planning Proposal lodged for 2-4 Nooal Street and 66 Bardo Road and to seek Council's approval to reject the Planning Proposal.

SUMMARY

In September 2017, Council received a Planning Proposal seeking to amend the Pittwater Local Environmental Plan 2014 (PELP 2014) to add Seniors Living as an additional permitted use at 2-4 Nooal Street and 66 Bardo Road, Newport.

Council has undertaken an assessment of the Planning Proposal in accordance with the NSW Planning & Environment's *Planning Proposal; A guide to preparing planning proposal* (2016), and concluded that the Proposal does not have sufficient merit to be progressed to a Gateway Determination.

The Proposal does not represent orderly and economic planning. The Proposal seeks to permit the introduction of a vulnerable group into an area affected by coastal inundation hazard.

The proposed use is contrary to the objectives of the E4 Environmental Living zone and would set a precedent for further medium density development in this zone.

The Proposal fails to provide any associated public benefit or improvement. There is no physical contribution to local affordable housing proposed nor is there a payment in lieu, contrary to Council and the Greater Sydney Commission's policies on affordable housing in rezoning applications.

It is recommended that Council does not submit the Planning Proposal for a Gateway Determination.

RECOMMENDATION OF GENERAL MANAGER PLANNING, PLACE & COMMUNITY

That:

- A. Council does not submit the Planning Proposal lodged for 2-4 Nooal Street and 66 Bardo Road, Newport for a Gateway Determination for the following reasons:
- a. It is inconsistent with the *Pittwater Local Planning Strategy* (2011).
 - b. It does not have strategic merit or site specific merit when assessed in accordance with the NSW Planning & Environment's *Planning Proposal: A guide to preparing planning proposal* (2016).
 - c. It does not align with the goals and targets of the *Revised Draft North District Plan*.
 - d. It is inconsistent with the following State Environmental Planning Policies;
 - i. Housing for Seniors or People with a Disability
 - ii. Coastal Protection
 - iii. Draft Coastal Management.
 - e. Is inconsistent with the following Local Planning Directions;
 - i. 2.1 – Environmental Protection Zones
 - ii. 4.3 – Flood Prone Land
 - iii. 7.1 – Implementation of the Metropolitan Strategy
 - iv. Draft Coastal Management Local Planning Direction.
 - f. It is inconsistent with the objectives of the E4 Environmental Living zone in Pittwater LEP 2014.
 - g. It seeks to permit medium density residential development that is inconsistent with the established low density character of the area.
 - h. It would set an unacceptable precedent.
- B. The proponent and interested parties who made a submission be advised of Council's decision.
-

REPORT

BACKGROUND

Site and Locality

The sites subject to the Planning Proposal are known as 2 Nooal Street, Newport (Lot 1 DP 540092), 4 Nooal Street, Newport (Lot 1 DP 315279) and 66 Bardo Road, Newport (Lot 2 DP 540092). Each property currently contains a single dwelling.

This area of Newport is characterised by single dwellings and secondary dwellings, with a number of larger lots throughout the area. The area retains significant vegetation and slopes down towards Crystal Bay. To west of the site is Crystal Bay, while to the north, east and west is predominantly characterised by low density residential development.



Aerial Image of site – with subject properties crosshatched.



Current PLEP 2014 Land Zoning map with properties crosshatched.



REPORT TO ORDINARY COUNCIL MEETING

ITEM NO. 10.8 - 28 NOVEMBER 2017

Pittwater Local Environmental Plan 2014

2-4 Nooal Street and 66 Bardo Road, Newport are currently zoned E4 Environmental Living with a permissible building height of 8.5m. The E4 Environmental Living zone does not permit seniors housing. The objectives of the E4 Environmental Living zone are as follows:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.
- To provide for residential development of a low density and scale integrated with the landform and landscape.
- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.

6 and 6A Nooal Street to the North of the property, and 87-91A Princess Lane to the south are similarly zoned. 81-85 Princess Lane, and properties to the east across Nooal Street are zoned R2 Low Density Residential.

To the west of the site is Crystal Bay, a bay on Pittwater, which is zoned W1 Natural Waterways.

Planning Proposal (PP0003/17)

Council received a Planning Proposal on 4 September 2017 to amend the PLEP 2014 for land at 2-4 Nooal Street and 66 Bardo Road, Newport. The Planning Proposal seeks to add an additional permitted use to Schedule 1 of the PLEP 2014 to permit seniors housing. Seniors Housing is defined under PLEP 2014 as:

seniors housing means a building or place that is:

- (a) a residential care facility, or
- (b) a hostel within the meaning of clause 12 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, or
- (c) a group of self-contained dwellings, or
- (d) a combination of any of the buildings or places referred to in paragraphs (a)–(c),
and that is, or is intended to be, used permanently for:
- (e) seniors or people who have a disability, or
- (f) people who live in the same household with seniors or people who have a disability, or
- (g) staff employed to assist in the administration of the building or place or in the provision of services to persons living in the building or place, but does not include a hospital.

Note.

Seniors housing is a type of **residential accommodation**—see the definition of that term in this Dictionary.

The following supporting documents were submitted with the Planning Proposal:

- Owner's consent
- Architectural Concept Plans
- Correspondence from the Department of Planning and Environment



REPORT TO ORDINARY COUNCIL MEETING

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- Extract from Pittwater Council Community Engagement Outcomes Report
- Correspondence from Minister for Planning
- Northern Beaches Council prelodgement meeting minutes
- Site Survey
- Site Accessibility Report by Accessibility Solutions (NSW)
- 13 surrounding property engagement responses.

In summary, the Proponent argues that the Planning Proposal should be supported due to the following reasons:

- 2 and 4 Nooal Street were purchased before the gazettal of the PLEP 2014 with the intention of developing seniors housing.
- The change in zoning between the 1993 and 2014 LEP removed the ability to develop seniors housing.
- The change in permissibility of seniors housing was not indicated during the preparation and exhibition of the draft PLEP 2014.
- The site is well located with regards to access to transport and services.
- The site is relatively free from hazards and constraints, and
- The proposed development is consistent with the character and environment of the area.

It is noted that Seniors Housing has never been permitted on this site as a consequence of Council policy by either Pittwater LEP 1993 or Pittwater LEP 2014. It was only ever permitted by virtue of the SEPP (HSPD) that overrides local Council policy. The introduction of Pittwater LEP 2014 removed the ability for the SEPP (HSPD) to override local Council policy.

The process to introduce Pittwater LEP involved two public exhibition periods and extensive community consultation including:

- written correspondence to all landowners in the local government area explaining their current and future zone
- notices in the Manly Daily
- information on Council's website
- community drop in sessions
- pop up stalls.

Indeed a nearby objector to this Proposal confirmed that they were aware of the changes proposed as a consequence of the proposed introduction of the new Pittwater LEP as they took "appropriate steps to acquaint ourselves as part of our purchase process with the zonings around us and the implications for further development".

The introduction of the new Pittwater LEP was intended as a like for like translation of the Pittwater LEP 1993, where possible and appropriate. Having regard for the location of this site near the foreshore of Pittwater and being subject to coastal hazard, the appropriate zone is E4 Environmental Living. Further, at the time of the introduction of the new Pittwater LEP, it was made clear that the new LEP did not intend to translate the application of State Environmental Planning Policies, over which Council has no control. The Pittwater LEP 2014 was validly made and the

proposition that the site should now be rezoned to allow Seniors Housing because the owner was not aware of the permissibility change is not accepted as a legitimate planning or legal argument.

Assessment of Planning Proposal

The assessment of the subject Planning Proposal has been undertaken in accordance with the NSW Planning & Environment's *Planning Proposal; A guide to preparing planning proposal* (2016).

Part 1 Objectives of intended outcomes

To amend the PLEP 2014 to enable a seniors living development.

Part 2 Explanation of Provision

The Planning Proposal seeks to:

- A. Amend the Pittwater Local Environmental Plan 2014 – Schedule 1 Additional Permitted Uses by inserting the following clause:

Use of certain land at 2 and 4 Nooal Street and 66 Bardo Road, Newport

- (1) *This clause applies to the following land identified as "Area ***" on the Additional Permitted Uses Map:*

- I. *2 and 4 Nooal Street, Newport, being Lot 1 DP 540092 and Lot 1 DP 315279*
- II. *66 Bardo Road, Newport, being Lot 2 DP 540092*

- B. *Development for the purpose of seniors housing is permitted with development consent on the consolidated allotment.*
Amend the Additional Permitted Uses Map – Sheet APU_017.

No draft mapping has been provided with the Planning Proposal.

Part 3 Justification

Section A – Need for the Planning Proposal

1. Is the Planning Proposal the result of any strategic study or report?

No. The relevant strategic strategy is the *Pittwater Local Planning Strategy* (2011), with which the Planning Proposal is inconsistent.

2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes or is there a better way?

Yes. The Planning Proposal is the best, and only, means of achieving the objectives of intended outcomes.

The applicant has provided a 'Net Community Benefit Test' under the Draft Centres Policy. However the NSW Planning & Environment's *Planning Proposal; A guide to preparing planning proposal* (2016) provides no indication that such a test is required.

Section B – Relationship to Strategic Planning Framework

3. Is the Planning Proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?

The revised Draft North District Plan (November 2017) is the applicable Draft District Plan. An assessment of the strategic and site specific merit of the Proposal against this draft Plan appears below:

a) Does the proposal have strategic merit? Is it:

<p>Consistent with the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment;</p>	<p><u>A Productive City</u></p> <p>Yes. The Planning Proposal is consistent. The Proposal would contribute to some job creation in the short term during construction. However the site is not located within an existing centre.</p> <p><u>A Liveable City</u></p> <p>The Proposal is considered not to relate to Liveability Priority 5 – Providing housing supply, choice and affordability, with access to jobs and services or Priority 6 –Creating and renewing great places and local centres.</p> <p>Northern Beaches Council has sufficient land and future development to reach its dwellings target. Council is on track to achieve our housing target. Additional rezoning to facilitate increase housing supply is not required.</p> <p>The proposed form provides some additional housing; however, the site is in a low density residential setting. The Proposal results in medium density housing that would be inconsistent with the existing character of its surrounds, particularly as the site (zoned E4 Environmental Living) is not in an existing centre or within walking distance of one.</p> <p>The Proposal also does not address the need for affordable housing or social housing identified. The location and proximity to water, as well as the large dwelling size and facilities indicated, show the development is aimed at upper levels of the housing market already able to acquire appropriate accommodation. No affordable or social housing is identified by the applicant, and the low number of dwellings indicates that the proposal will not provide additional affordable housing under Northern Beaches Council's policies.</p> <p>Local Housing Strategy – Northern Beaches Council was recently amalgamated and has not yet adopted a Local Housing Strategy. However previous investigations have identified the need for small housing types in well located areas close to centres, which is also replicated in the Draft District Plan. This Proposal runs contrary to those aims.</p> <p><u>A Sustainable City</u></p> <p>The Proposal is inconsistent with Priority 17 – Protecting and enhancing scenic and cultural landscapes. The area is well regarded by the community for its scenic value where by vegetation and bushland dominate over houses in a waterway setting. This proposal is for a large and bulky development on the water which will detract from these scenic and aesthetic values.</p> <p>The Proposal is inconsistent with Priority 19 – Increasing urban tree canopy. It will see the removal of existing large trees without replacement. Further it will see an overall reduction in the tree canopy and the ability to increase it.</p>
<p>Consistent with a relevant</p>	<p>No. The Department has not formally endorsed the <i>Pittwater</i></p>

local council strategy that has been endorsed by the Department;	<i>Local Planning Strategy (2011)</i> ; however, it has been used to inform the Pittwater LEP 2014 which was gazetted on 30 May 2014 and came into effect on 27 June 2014.
Responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls.	The Planning Proposal does not respond to a change in circumstances.

b) Does the Proposal have site-specific merit, having regard to the following:

The natural environment (including known significant environmental values, resources or hazards).	The site is affected by a coastal inundation risk. As such it is generally not suited for a change to permit seniors housing or housing for people with a disability.
The existing uses, approved uses, and likely future uses of land in the vicinity of the proposal.	The subject site is surrounded by detached dwelling houses to the east, south and north. To the west sits Crystal Bay and Pittwater. Council's plans and policies do not propose any changes to the current uses in the locality. The introduction of medium density housing on this site would be inconsistent with the established character of the area.
The services and infrastructure that are or will be available to meet the demands arising from the Proposal and any proposed financial arrangements for infrastructure provision.	The Proposal seeks to allow medium density style residential development to be occupied by seniors or people with a disability. However the site is located 800m from the Newport Village Centre outside a walkable radius. While it is acknowledged the site is just within 400m walking distance of a bus stop located on Gladstone Street, it is not located within a centre or along a transport corridor with access to high frequency public transport which is considered essential for any increases in dwelling densities. The Proposal is significantly at odds with Council's strategic planning framework. From a traffic generation and demand perspective, it is reasonable to assume the Planning Proposal will have a minimum impact on existing traffic flows which is unlikely to significantly increase the anticipated peak hour traffic in the road network. However there will to be upgrades to the shared driveway through Bardo Road and extensive upgrades to pedestrian facilities to ensure compliance with accessibility standards. Council's engineers have recommended the following. Currently the western end of Bardo Road has a small and narrow shared driveway servicing a small number of dwellings. The attached concept plans indicate that the basement level of the carpark will be accessed from a new ramp from Bardo Road. The applicant will be required to remove all existing driveways and garages from their site and upgrade this vehicular access point. This would require realignment and widening to provide two way access as well as upgrades to the Bardo and Nooal intersection to improve its safety. Detailed plans showing this

	<p>work would be required.</p> <p>Upgrades required to the pedestrian access are as follows:</p> <ul style="list-style-type: none"> • Kerb ramp south side of pedestrian crossing to be modified to meet accessibility standards • Extension of footpath on south side of Gladstone St to provide all weather access to boarding point • Provision of appropriately sized and positioned shelter at 62 Gladstone St bus stop • Provision of 1.5m wide footpath on Bardo Road from the property to existing ramps at King Street • Pedestrian refuge compliance works at the roundabout on King and Bardo including ramps to comply (accessibility audit to confirm) • Extend footpath to Gladstone St boarding point (Westbound stop) including kerb adjustment to suit low floored buses • Kerb adjustment to suit low floored buses Eastbound stop • All ramps to be compliant between subject site and transport stops • Accessibility requirements at all crossing and transport collection points – ie tactiles at ramps and bus stops. <p>These works will be required to be provided by the applicant.</p>
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4. Is the Planning Proposal consistent with a Council's local strategy or other local strategic plan?

No. The relevant strategic report is with the *Pittwater Local Planning Strategy (2011)* with which the Planning Proposal is inconsistent. It is recognised that this strategy has not been formally endorsed by the Department of Planning and Environment. The *Pittwater Local Planning Strategy (2011)* was adopted by the former Pittwater Council on 15 August 2011.

Centre Based Development

Actions contained within the *Pittwater Local Planning Strategy (2011)* seek to intensify land uses within close proximity to existing centres while continuing the same land uses for land located away from services or impacted by constraints. The motivations for these actions are to contain dense development in areas that are well serviced and located close to existing centres. This Proposal is clearly inconsistent with that strategy by locating a denser development outcome more than 800m away from the Newport centre.

Dwelling Targets

The Northern Beaches has been assigned a target for 3,400 dwellings within the next five years. Northern Beaches Council has a number of projects and rezonings underway that will meet the new 5 year dwelling target.

Affordable and Appropriate Housing

Key workers are an important contributor to the local economy and community; however they are increasing locked out of accommodation on the Northern Beaches. To overcome this issue, a target of 10% of all new dwellings in a rezoning was developed in the strategy. While Northern Beaches Council has not yet developed a new housing strategy, it has however adopted an Affordable Housing Policy. This Policy commits Council to a 10% affordable housing target for all

rezonings proposing new dwellings. Dedicated dwellings would then be awarded to a community housing provider. This application has made no provisions of a dedication, nor has it proposed a contribution in lieu.

Pittwater Local Environmental Plan 2014

Under the terms of the PLEP 2014, the site is zoned E4 Environmental Living. The Proposal seeks an additional permitted use for the site and of a scale that will be inconsistent with the objectives and intent of the zone. The site locality is well regarded by the community for its aesthetic values and this development will have an adverse impact on those values. It is not considered orderly planning to allow an additional permitted use on a site when it clearly conflicts with the intent and objectives of the land zone. Further the development will not enhance foreshore vegetation.

If this Planning Proposal is approved it is likely to set a precedent that derogates from the objectives of the E4 Environmental Living zone. This would potentially open an argument for other similarly zoned sites with similar characteristics to have their zoning and planning controls amended.

Ownership and Property Transfer

The Planning Proposal states that the owners of 2 and 4 Nooal Street were unaware in the change of permissibility brought about by the change in the local environmental plans. Furthermore it states that both 2 and 4 Nooal were bought with the intention of developing seniors housing and were bought before the gazettal of the Pittwater Local Environmental Plan 2014. While this is not a matter of consideration with respect to the Planning Proposal, it is important to note that there was ample opportunity for the owners to familiarize themselves with the terms of the PLEP 2014.

In regards to 2 Nooal Street, it can be clearly shown that the property was purchased after the Pittwater Local Environmental Plan 2014 came into effect. The following chronology is considered important to explain the issue:

- 149 Certificate issued on 2 April 2014 (2/4/14) – Indicates Draft LEP and sites future E4 zoning
- Draft LEP gazetted 30 May 2014 (30/5/14), in force 27 June 2014 (27/6/14)
- Contract for sale of 2 Nooal Street entered into on 1 August 2014 (1/8/14)
- Settlement of contract on 12 September 2014 (12/9/14).
- 149 Certificate issued 2 October 2015 (2/10/15).

The timing outlined above would have provided the owners plenty of opportunity to ascertain the potential of the property including independent professional advice on how the draft LEP would impact upon the property. The 149 Certificate indicating the Draft LEP and future E4 zones was issued approximately 5 month prior to the settlement of contract.

Additionally, during the preparation and implementation of the draft LEP, the former Pittwater Council undertook extensive community consultation, including two public exhibitions. The first exhibition of the draft LEP occurred in 2013. During this exhibition Council sent letters to all land owners explaining their current and future land zone and land use permissibility. Residents and concerned individuals were also given the ability to attend a range of information and drop in sessions to raise their concerns. A further public exhibition took place in early 2014 giving concerned individuals an extra chance to raise their issues.

5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

Title of State Environmental Planning Policy (SEPP)	Applicable	Consistent
SEPP No 1 – Development Standards	YES	YES
SEPP No 14 – Coastal Wetlands	N/A	N/A
SEPP No 19 – Bushland in Urban Areas	N/A	N/A
SEPP No 21 – Caravan Parks	N/A	N/A
SEPP No 26 – Littoral Rainforests	N/A	N/A
SEPP No 30 – Intensive Agriculture	N/A	N/A
SEPP No 33 – Hazardous and Offensive Development	N/A	N/A
SEPP No 36 – Manufactured Home Estates	N/A	N/A
SEPP No 44 – Koala Habitat Protection	N/A	N/A
SEPP No 47 – Moore Park Showground	N/A	N/A
SEPP No 50 – Canal Estate Development	N/A	N/A
SEPP No 52 – Farm Dams and Other Works in Land and Water Management Plan Areas	N/A	N/A
SEPP No 55 – Remediation of Land	YES	YES
SEPP No 62 – Sustainable Aquaculture	N/A	N/A
SEPP No 64 – Advertising and Signage	YES	YES
SEPP No 65 – Design Quality of Residential Flat Development	YES	YES
SEPP No 70 – Affordable Housing (Revised Schemes)	N/A	N/A
SEPP 71 – Coastal Protection	YES	NO
SEPP (Affordable Rental Housing) 2009	N/A	N/A
SEPP (Building Sustainability Index: BASIX) 2004	YES	YES
SEPP (Education Establishments and Child Care Facilities) 2017	N/A	N/A
SEPP (Exempt and Complying Development Codes) 2008	YES	YES
SEPP (Housing for Seniors or People with a Disability) 2004	YES	NO
SEPP (Infrastructure) 2007	N/A	N/A
SEPP (Integration and Repeals) 2016	N/A	N/A
SEPP (Kosciuszko National Park—Alpine Resorts) 2007	N/A	N/A
SEPP (Kurnell Peninsula) 1989	N/A	N/A
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	N/A	N/A
SEPP (Miscellaneous Consent Provisions) 2007	N/A	N/A

SEPP (Penrith Lakes Scheme) 1989	N/A	N/A
SEPP (Rural Lands) 2008	N/A	N/A
SEPP (State and Regional Development) 2011	N/A	N/A
SEPP (State Significant Precincts) 2005	N/A	N/A
SEPP (Sydney Drinking Water Catchment) 2011	N/A	N/A
SEPP (Sydney Region Growth Centres) 2006	N/A	N/A
SEPP (Three Ports) 2013	N/A	N/A
SEPP (Urban Renewal) 2010	N/A	N/A
SEPP (Western Sydney Employment Area) 2009	N/A	N/A
SEPP (Western Sydney Parklands) 2009	N/A	N/A

Coastal Protection

The Proposal is also inconsistent with the aims and objectives of the Coastal Protection SEPP. The relevant aims of that policy include;

- a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and
- (e) to ensure that the visual amenity of the coast is protected, and
- (k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and
- (l) to encourage a strategic approach to coastal management.

The Proposal is clearly inconsistent as it does not protect and manage the natural and cultural value of the site or its amenity by locating a bulky development in the foreshore area against the community's wishes. The development appears as a large three storey development without screening vegetation in an area of two storey single dwellings which are dominated by vegetation. This Proposal also runs contrary to the intent of the policy to encourage a strategic approach to coastal management by locating vulnerable uses in an area subject to coastal inundation.

Housing for Seniors or People with a Disability

While the Proposal is for a Seniors Living development, the applicant has instead stated their intention to rely on the provisions of the Pittwater Local Environmental Plan 2014 and the Pittwater 21 Development Control Plan for permissibility and development controls. It is noted that the SEPP (HSPD) excludes land identified as environmentally sensitive from the application of the policy.

Advice from the NSW Department of Planning and Environment provided to the applicant indicates that the subject sites are excluded from the application of the policy through their E4 Environmental Living zoning. This occurs by excluding it from the SEPP under the provisions of Clause 4(6) Land to which Policy does not apply and (a) land described in Schedule 1 (Environmentally Sensitive Land). Under Schedule 1 the relevant clause reads as:

Land identified in another environmental planning instrument by any of the following descriptions or by like descriptions or by descriptions that incorporate any of the following words or expressions:

- (d) *environmental protection,*

Under the Standard Instrument, the 'E' zones are regarded as environmental protection zones.

In this regard the site is considered to meet the Schedule 1 criteria for zones describe as (d) environmental protection. It is clear from the intention of the Policy to not allow such development on environmentally sensitive land. Allowing the rezoning to proceed would not be in keeping with the intent of the Policy and would render the Planning Proposal inconsistent with the objectives of the SEPP.

Title of deemed SEPP	Applicable	Consistent
SREP No 20 – Hawkesbury-Nepean River (No 2 - 1997)	YES	YES

Draft SEPP	Applicable	Consistent
Draft SEPP (Coastal Management) 2016	YES	NO

The Proposal is inconsistent with the Draft Coastal Management SEPP as it fails to meet the aims of the Policy to (a) properly manage development in the coastal zone and protect the environmental assets of the coast and (b) establish a framework for land use planning to guide decisions making. The site is located within the 'Coastal Use' zone mapping under the SEPP. The provisions of the policy say a consent authority must not grant consent unless it satisfied the development will not increase the risk of coastal hazards. The Proposal will increase the risk by increasing the potential density of the site by locating more vulnerable people in area at risk from coastal inundation.

6. Is the Planning Proposal consistent with applicable Ministerial Directions (Section 117 Directions)?

1 Employment and Resources			
	Direction	Applicable	Consistent
1.1	Business and Industrial Zones	N/A	N/A
1.2	Rural Zones	N/A	N/A
1.3	Mining, Petroleum Production and Extractive Industries	N/A	N/A
1.4	Oyster Aquaculture	N/A	N/A
1.5	Rural Lands	N/A	N/A

2 Environment and Heritage			
	Direction	Applicable	Consistent
2.1	Environment Protection Zones	YES	NO
2.2	Coastal Protection	YES	YES
2.3	Heritage Conservation	N/A	N/A
2.4	Recreation Vehicle Areas	N/A	N/A
2.5	Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	N/A	N/A

The Planning Proposal is inconsistent with direction 2.1 Environmental Protection Zones. The Planning Proposal seeks to amend the PLEP by increasing the density allowable on the site. It is

clearly inconsistent with 2.1 (5) by which 'A planning proposal that applies to land within an environmental protection zone or otherwise identified for environmental protection purposes in a LEP must not reduce the environmental standards that apply to the land (including modifying development standards that apply to the land)'.

Under direction 2.1(6) a planning proposal may be inconsistent if the relevant planning authority can justify an inconsistency through a strategy or study. However no such strategy or study has been included with the Planning Proposal and it does not explain how it can possibly warrant such a justification. Further, the Planning Proposal is inconsistent with the *Pittwater Local Planning Strategy (2011)* which identified the site as only allowing limited low impact residential development of dwelling houses and secondary dwellings due to the sites environmental characteristics. The proposed seniors living development is more akin to a medium density development outcome which is not consistent. Such a development is better suited to a R3 Medium Density Residential zone.

3 Housing, Infrastructure and Urban Development			
	Direction	Applicable	Consistent
3.1	Residential Zones	N/A	N/A
3.2	Caravan Parks and Manufactured Home Estates	N/A	N/A
3.3	Home Occupations	YES	YES
3.4	Integrating Land Use and Transport	YES	NO
3.5	Development Near Licensed Aerodromes	N/A	N/A
3.6	Shooting Ranges	N/A	N/A

The proposed sites are zoned as E4 Environmental Living and do not come under the guise of Residential Zones. The S117 Direction is therefore not considered applicable to the sites or the Planning Proposal.

The Planning Proposal is inconsistent with Direction 3.4 Integrating Land Use and Transport as it does not comply with the objectives of this direction. It does not align land uses, transport, services and facilities. Additionally the Proposal does not comply with the 10 principles set out in the document *Improving Transport Choice – Guidelines for planning and development (DUAP 2001)*. The Proposal does not meet Principle 1 – Concentrate in Centres, Principle 2 – Mix uses in centres, Principle 3 – Align centres within corridors and Principle 4 – Link public transport with land use strategies.

4 Hazard and Risk			
	Direction	Applicable	Consistent
4.1	Acid Sulfate Soils	YES	YES
4.2	Mine Subsidence and Unstable Land	N/A	N/A
4.3	Flood Prone Land	YES	NO
4.4	Planning For Bushfire Protection	N/A	N/A

The site is identified as Class 5 under the Acid Sulfate Soils mapping of the Pittwater Local Environmental Plan 2014. The attached basement carpark would require extension excavation of the site which could potentially disturb the acid sulfate soils. However it is believe that this matter

can be addressed through the development application stage if the Planning Proposal was to proceed.

The site is also subject to a coastal inundation risk. As outlined above it is not appropriate to change planning controls to permit a development form that introduces vulnerable people into a site that is identified as hazardous.

5 Regional Planning			
	Direction	Applicable	Consistent
5.1	Implementation of Regional Strategies	N/A	N/A
5.2	Sydney Drinking Water Catchments	N/A	N/A
5.3	Farmland of State and Regional Significance on NSW Far North Coast	N/A	N/A
5.4	Commercial and Retail Development along the Pacific Hwy, North Coast	N/A	N/A
5.5	Development in the vicinity of Ellalong, Paxton and Millfield (revoked)	N/A	N/A
5.6	Sydney to Canberra Corridor (revoked)	N/A	N/A
5.7	Central Coast (revoked)	N/A	N/A
5.8	Second Sydney Airport: Badgerys Creek	N/A	N/A
5.9	North West Rail Link Corridor Strategy	N/A	N/A
5.10	Implementation of Regional Plans	N/A	N/A

6 Local Plan Making			
	Direction	Applicable	Consistent
6.1	Approval and Referral Requirements	YES	YES
6.2	Reserving Land for Public Purposes	N/A	N/A
6.3	Site Specific Provisions	YES	YES

7 Metropolitan Planning			
	Direction	Applicable	Consistent
7.1	Implementation of the Metropolitan Strategy	YES	NO
7.2	Implementation of Greater Macarthur Land Release Investigation	N/A	N/A
7.3	Parramatta Road Corridor Urban Transformation Strategy	N/A	N/A
7.4	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	N/A	N/A
7.5	Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A	N/A

7.6	Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A	N/A
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The Proposal is inconsistent with Direction 7.1 Implementation of the Metropolitan Strategy

The Planning Proposal is inconsistent with Objective 6 – Services and infrastructure meet communities' changing needs. The site is not located within close distance of the necessary services and transport to justify a rezoning.

The Planning Proposal is inconsistent with Objective 11 – Housing is more diverse and affordable. The Proposal is aimed at the higher end of the housing market and does not make a contribution to affordable housing or a monetary contribution in lieu. This is in contrast to the stated goal of providing affordable rental housing at a rate of 5-10% on rezoning proposals.

The Planning Proposal is inconsistent with Objective 28 – Scenic and cultural landscapes are protected. The site is well regarded by the community for its scenic and aesthetic values of having waterway foreshores dominated by vegetation. The Proposal will locate a large and bulky development on the foreshore which will dominate the vegetation and impact the site's scenic values.

Draft 117 Direction			
	Direction	Applicable	Consistent
	Coastal Management	YES	NO

The Proposal is inconsistent with the intent of the draft Local Planning Direction for Coastal Management. The relevant section of the direction states:

(4) A planning proposal must not rezone land which would enable increased development or more intensive land-use on land:

(a) within a coastal vulnerability area identified by the State Environmental Planning Policy (Coastal Management) 2016; or

(b) identified as land affected by a coastal hazard as per (1) (b) above.

The site is identified as being subject to a coastal hazard identified in (1) (b). The site is subject to coastal inundation. Therefore the Proposal is inconsistent by rezoning land to increase development potential by allowing for a more intensive land use on the site.

7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The site is not identified as containing critical habitat, threatened species, populations or ecological communities, or their habitats. A submitter raised the potential for there to be protected endangered species in the vicinity of the development such as possums and bandicoots. This issue can be assessed at the development application stage if the Planning Proposal was to proceed.

8. Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

The Planning Proposal is not considered to have other environmental impacts besides from those during construction if the Proposal was to proceed through Gateway. These matters are likely to be restricted to building noise, dust, smells and temporary parking shortfalls. These impacts could be managed through conditions of consent on a development application or by the certifying authority.

9. How has the Planning Proposal adequately addressed any social and economic effects?

The Planning Proposal indicates that the seniors housing will generate permanent employment opportunities through ongoing maintenance and management of the site. However the expected benefits are considered to be marginal and there is no attached economic study to indicate as such. The Planning Proposal also states the development of the site for seniors housing will have no adverse environment or social affects. However the development of seniors housing on the site will run contrary to the community's wish to retain foreshores areas as low density areas where vegetation is the dominant feature. A number of submissions from the public have raised this matter, as well as the development being for private benefit with no positive social impact on the community.

Section D – State and Commonwealth interests

10. Is there adequate public infrastructure for the Planning Proposal?

The Planning Proposal was sent to a number of state authorities as part of the preliminary (non-statutory) exhibition. Commentary was received from three state agencies. Transport for NSW responded with no comment while Roads and Maritime Services raised no objection. Sydney Water advised that due to the sites location to their assets that building plan approvals and a Section 73 Certificate be obtained from them prior to construction. These conditions can be imposed at the development application stage.

11. What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway Determination?

No applicable at this stage as the subject Planning Proposal has not progressed to the Gateway for a determination.

CONSULTATION

Preliminary (non-statutory) notification of the Planning Proposal was undertaken between 16 September and 16 October 2017 (30 days).

The Planning Proposal and its documents were made available on Council's website on the 'Your Say Northern Beaches' page and via the 'ePlanning Portal', and in hard copy at Council Customer service centres at Avalon, Mona Vale, Dee Why and Manly.

798 notification letters were sent to property owners within a 500m radius from the site. A notification was also sent by email to registered community groups within the area, including the Newport Resident's Association. The Planning Proposal was exhibited in the Manly Daily during the exhibition period.

The applicant attached 13 surrounding neighbour responses with their application. These responses were either neutral or supportive of the Proposal. One of these neighbours provided the same submission during the exhibition period. Two of these submitters have since provided a submission during the exhibition period stating they were unaware the Proposal was for a rezoning and not a development application. They have subsequently wished to state their objection.

During the exhibition period, 28 submissions were received from the general public. Of these submissions, one was from Newport Resident's Association while the remainder were mostly local residents.

Four submissions supported the Proposal. One of these submissions was from the owner of 66 Bardo Road. One submission gave qualified support, subject to satisfactory resolution of a number of issues. One submission did not object to the Proposal, but asked that access around the Crystal Bay foreshore be retained as the area is a locally popular walking track. The remaining 23 submission objected to the Proposal.

The issues raised by the objectors include:

- Flooding
- Coastal inundation
- Environmentally sensitive site
- Stormwater and run-off into Crystal Bay
- The bulk/scale/design of the Proposal
- The density of the Proposal
- Traffic/parking issues
- The Bardo/Nooral blind corner is dangerous with narrow lanes and high speed traffic
- Vegetation removal
- Permissibility of the zones
- Foreshore access and walking along Crystal Bay
- Seniors living not being occupied by seniors
- Noise
- Character of area
- Owners would have been aware of change in zoning and permissibility
- Property transfer history
- Spot rezoning
- Precedent for further rezonings in Crystal Bay
- Western end of Bardo Road is narrow and unformed
- Lack of footpaths
- Site not meeting HSPD SEPP requirements
- Endangered/threatened flora and fauna
- Local Infrastructure demand and capacity
- Zoning reflects Council and communities intended land uses for single dwellings and secondary dwellings
- E4 Environmentally Living zone should be considered holistically not piecemeal
- Construction impacts (noise, traffic, parking, delivery trucks).

A summary of these submissions and Council's response can be seen at **Attachment 1**.

AGENCY REFERRALS

The following agencies were notified of the Planning Proposal:

- Transport for New South Wales
- Road and Maritime Services
- Ausgrid
- DPI – Office of Water
- DPI - Fisheries
- Sydney Water
- Telstra.

Responses and Council's response can be seen at **Attachment 2**.

INTERNAL REFERRALS

- Transport and Civil Infrastructure
- Natural Environment and Climate Change.

The comments received from internal technical experts advise a number of conditions that would have to be imposed on the development for them to comply with Council's policies and standards. A summary of these comments are at **Attachment 3**.

FINANCIAL CONSIDERATIONS

Should the Planning Proposal proceed and subsequently be finalised, it would have the following financial impact:

- a) Short term jobs would be created during the construction phase with limited financial benefits.
- b) Any future development consent would require a contribution in accordance with the *Pittwater Section 94 Contributions Plan for Residential Development* (2015) to contribute to the provision of infrastructure and services required to support the development.

SOCIAL CONSIDERATIONS

Should the Planning Proposal proceed and subsequently be finalised, it would have the following social impact:

- a) The low density nature of the area including its aesthetic values appears to have a strong significance to the community demonstrated by the many submissions received. The social significance of the character of the area has not been taken into consideration in this Proposal.
- b) The Proposal represents a private benefit rather than a public benefit and this Proposal is not considered in the public interest.

ENVIRONMENTAL CONSIDERATIONS

Should the Planning Proposal proceed and subsequently be finalised, it would have the following social impact:

- a) Construction of a large and bulky development in an area well regarding for its environmental characteristics and aesthetic values
- b) Increased hard space cover, tree loss and their associated impacts.



MINUTES

ORDINARY COUNCIL MEETING

held at the Civic Centre, Dee Why on

TUESDAY 28 NOVEMBER 2017

(2017/17)



MINUTES OF ORDINARY COUNCIL MEETING

28 NOVEMBER 2017

10.8 PLANNING PROPOSAL (PP0003/17) 2-4 NOOAL STREET AND 66 BARDO ROAD, NEWPORT

NOTE 1: Greg Boston and Gavin Butler (on behalf of Newport Residents Association) addressed Council on this Item.

NOTE 2: Councillor Amon left the chamber at 10:24pm and returned at 10:25pm.

NOTE 3: Councillor De Luca left the chamber at 10:25pm and returned at 10:26pm.

179/17 RESOLVED

Cr Ferguson / Cr Grattan

That:

- A. Council does not submit the Planning Proposal lodged for 2-4 Nooal Street and 66 Bardo Road, Newport for a Gateway Determination for the following reasons:
 - a. It is inconsistent with the *Pittwater Local Planning Strategy* (2011).
 - b. It does not have strategic merit or site specific merit when assessed in accordance with the NSW Planning & Environment's *Planning Proposal: A guide to preparing planning proposal* (2016).
 - c. It does not align with the goals and targets of the *Revised Draft North District Plan*.
 - d. It is inconsistent with the following State Environmental Planning Policies;
 - i. Housing for Seniors or People with a Disability
 - ii. Coastal Protection
 - iii. Draft Coastal Management.
 - e. Is inconsistent with the following Local Planning Directions;
 - i. 2.1 – Environmental Protection Zones
 - ii. 4.3 – Flood Prone Land
 - iii. 7.1 – Implementation of the Metropolitan Strategy
 - iv. Draft Coastal Management Local Planning Direction.
 - f. It is inconsistent with the objectives of the E4 Environmental Living zone in Pittwater LEP 2014.
 - g. It seeks to permit medium density residential development that is inconsistent with the established low density character of the area.
 - h. It would set an unacceptable precedent.
- B. The proponent and interested parties who made a submission be advised of Council's decision.

VOTING

FOR: Crs Amon, Bingham, Daley, De Luca, Ferguson, Grattan, Harrison, McTaggart, Philpott, Regan, Sprott, Walton, Warren and White

AGAINST: Cr Heins

CARRIED

PLANNING PROPOSAL

Amendments to
Pittwater Local Environmental Plan 2014
2-4 Nooal Street and 66 Bardo Road, Newport

July 2018
(submission for
Gateway
Determination)

Contents

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Part 1 – Intended Outcomes

The intended outcome of the Planning Proposal is to rezone the subject properties, being 2-4 Nooal Street and 66 Bardo Road, Newport, from E4 Environmental Living to R2 Low Density Residential.

The proposed amendments will:

- Amend the Land Zoning Map Sheet 17 of the Pittwater Local Environmental Plan 2014 by changing the land zoning of the subject properties.

Part 2 – Explanation of Provisions

The proposal seeks to amend the Land Zoning Mapping for three properties under the Pittwater Local Environmental Plan 2014. It seeks to change the land zoning for 2-4 Nooal Street and 66 Bardo Road, Newport, from E4 Environmental Living to R2 Low Density Residential.

Part 3 – Justification

Section A – Need for the Planning Proposal

1. Is the Planning Proposal a result of any strategic study or report?

No. This Planning Proposal is not the result of any strategic study or report. This Planning Proposal is the result of a Rezoning Review decision by the Sydney North Planning Panel.

2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

An amendment to Schedule 1 of the Pittwater Local Environmental Plan 2014 to include an additional permitted use for seniors housing would achieve the intended outcome of the original Planning Proposal.

Section B – Relationship to strategic planning framework

3. Is the Planning Proposal consistent with the objective and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

a) Does the proposal have strategic merit? Is it;

Consistent with the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans release for public comments?

North District Plan

The North District Plan (March 2018) is the relevant and applicable district plan. An assessment of the strategic and site specific merit of the proposal against this plan appears below

Planning Priority N5 – Providing housing supply, choice and affordability, with access to jobs, services and public transport

Northern Beaches Council has sufficient land and planned future development to reach its dwelling target. Additional rezoning to facilitate increased housing supply is not required.

The proposal provides some additional housing; however, the site is in a low density residential setting. The proposal results in medium density that would be inconsistent with the existing character of its surrounds, particularly as the site is currently zoned E4 Environmental Living.

The proposal also does not address the need for affordable housing or social housing identified. The location and proximity to water, as well as the larger dwelling sizes and facilities indicated, show the development is aimed at upper levels of the housing market already able to acquire appropriate accommodation. No affordable or social housing is identified by the applicant, and the low numbers of dwellings indicates that the proposal will not provide additional affordable housing under Northern Beaches Council's policies.

Planning Priority N17 - Protecting and enhancing scenic and cultural landscapes

The Proposal is inconsistent with this priority. The area is well regarded by the community for its scenic amenity where vegetation and bushland dominates over houses. This Proposal is to enable a large and bulky development on the water which will detract from those scenic and aesthetic values.

Planning Priority N19 – Increasing urban tree canopy cover and delivering Green Grid connections

The Proposal is inconsistent with this priority. It will see the removal of existing large trees without replacement. It will see an overall reduction in the tree canopy and the ability to increase it.

Planning Priority N22 – Adapting to the impacts of urban natural hazards and climate change

This Planning Proposal is inconsistent with the priority N22 of the North District Plan. The priority provides for the consideration of the impact of natural hazards now and into the future, as well as the exacerbating impacts of climate change. It seeks to avoid placing new development in areas at risk from hazards, as well avoiding the intensification of development in areas already built up. Objective 37 states that exposure to natural and urban hazards is to be reduced and not increased. Action 80 is to support initiatives that respond to the impacts of climate change and 81 is to avoid locating new urban development in areas exposed to natural and urban hazards and consider options to limit the intensification of development in existing urban areas most exposed to hazards. This Planning Proposal is inconsistent with those objectives and actions by increasing risk by placing denser development in areas at risk from natural hazards, including flooding and coastal inundation, the impact of which will be increased from climate change.

It is further noted that page 118 of the district plan states '*placing development in hazardous areas or increasing the density of development in areas with limited evacuation options increase risk to people and property*'. It is noted that during flooding events access to the subject properties is impacted by floodwaters overtopping both road access from Nooal Street to Irrubel Road and from Bardo Road to King Street. It is further noted that the intended habitants of the development are more likely to be frail or disabled which only further increases the risk due to periods of isolation.

Consistent with a relevant local council strategy that has been endorsed by the Department?

No. The Department has not formally endorsed the *Pittwater Local Planning Strategy (2011)*. However the strategy was used to inform the Pittwater Local Environmental Plan 2014 which was gazetted on 30 May 2014 and came into effect on 27 June 2014.

Responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls?

The Planning Proposal does not respond to a change in circumstances. There is no new investment in infrastructure in the area and existing controls recognises demographic changes in the area. The *Pittwater Local Planning Strategy (2011)* which informed the existing planning controls acknowledged that the population of the former Pittwater Council was ageing with a need for seniors housing and 'ageing in place'. It acknowledged that there was a need for such housing, however it noted such development should be in well located areas close to services, such as near town and village centres. Additional housing for seniors can be easily developed on land zoned appropriately around said centres, without the need for rezonings.

b) Does the proposal have site-specific merit, having regard to the following:

The natural environment (including known significant environmental values, resources or hazards)?

The site does not have site specific merit. It is impacted by a coastal inundation risk, as well as identified under the draft Newport Flood Study 2018 as being impacted by flood hazards. As such it is generally not suited for a change to permit additional housing in areas impacted by natural hazards, including seniors housing that is more likely to accommodate frail or disabled people who require assistance in evacuation events.

The existing uses, approved uses, and likely future uses of land in the vicinity of the proposal?

The site is surrounded by detached dwelling houses to the north, east and south. There is no rezoning of this area proposed or anticipated in this area. The introduction of a seniors living medium density development would be considered to be inconsistent with both the established character of the area and the desired future character.

The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision?

The Proposal seeks to allow medium density style residential development to be occupied by seniors or people with a disability. However the site is located 800m from the Newport Village Centre.

While it is acknowledged the site is just within 400m walking distance of a bus stop located on Gladstone Street, it is not located within a centre or along a transport corridor with access to high frequency public transport which is considered essential for any increases in dwelling densities. The Proposal is significantly at odds with Council's strategic planning framework.

From a traffic generation and demand perspective, it is reasonable to assume the Planning Proposal will have a minimum impact on existing traffic flows which is unlikely to significantly increase the anticipated peak hour traffic in the road network.

However there will need to be upgrades to the shared driveway through Bardo Road and extensive upgrades to pedestrian facilities to ensure compliance with accessibility standards.

4. Is the Planning Proposal consistent with a council's local strategy or other local strategic plan?

A review has been undertaken of the Planning Proposal against certain policies and plans of Northern Beaches Council as follows:

Pittwater Local Planning Strategy (2011)

The proposal is within the former Pittwater Council area and the *Pittwater Local Planning Strategy (2011)* is considered the relevant strategy. While this strategy has not been endorsed by the Department of Planning and Environment, it was used to inform the Pittwater Local Environmental Plan 2014 which has been gazetted and came into force on 27 June 2014. This Planning Proposal is inconsistent with that strategy.

Centre Based Development

Actions contained within the strategy seek to intensify land uses within close proximity to existing centres while continuing the same land uses for land located away from services or impacted by constraints. The motivations for these actions are to contain dense development in areas that are well served by services and located close to existing centres. This Proposal is clearly inconsistent with that strategy by rezoning land to allow for denser development more than

800m away from the Newport village centre, away from high frequency public transport and impacted by natural hazards

Dwelling Targets

The Northern Beaches LGA has been assigned a target for 3,400 dwellings within the next five years. Northern beaches Council has a number of projects and rezonings underway that will meet this dwelling target including the Ingleside Land Release precinct and Northern Beaches Hospital precinct that are being prepared by Council and the NSW Department of Planning and Environment. Additional dwellings above this target are not required. The strategy indicated that the former Pittwater Council was on track to meet its dwelling targets.

Affordable and Appropriate Housing

Key workers are an important contributor to the local economy and community; however they are increasingly locked out of accommodation on the Northern Beaches. To alleviate these problems Northern Beaches Council has adopted an affordable housing policy which commits Council to a 10% affordable housing target for all rezonings proposing new dwellings. This application has made no provisions for affordable housing.

5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

Table 1 – Comments on Applicable SEPPs

State Environmental Planning Policy	Comment
No 55 - Remediation of Land	The site's history indicates that it has been used for predominantly residential purposes for the last 50+ years. The possibility of contamination is considered low. This matter could be determined in a future development application.
No 65 – Design Quality of Residential Apartments	The concept plans indicate a residential apartment development that would meet the criteria for the applicability of this policy. Any future development application that reaches this threshold would have to demonstrate consistency with this policy.
No 70 – Affordable Housing (Revised Schemes)	Northern Beaches Council is now identified under this SEPP as an LGA with a need for affordable housing. The policy allows Council to impose an affordable rental housing contribution or levy on any future development application for additional dwellings that can only be realised through a rezoning as per section 7.32 of the <i>Environmental Planning and Assessment Act 1979</i> and (1) (c).
(Coastal Management) 2018	The Planning Proposal is inconsistent with the aims and intent of this policy to minimise development that places more people at risk

	<p>from coastal hazards. The site is identified as a property subject to coastal inundation, which is defined as a 'coastal hazard' under the <i>Coastal Management Act 2016</i>. This proposal is to allow for the eventual development of a seniors living development on the subject properties. This represents an increase in risk by locating more people, including those more likely to be frail or disabled, within the hazard area.</p> <p>The proposal is also inconsistent with the following objectives of the SEPP, namely;</p> <p><i>(a) To protect and manage the natural, cultural, recreational and economic attributes of the NSW Coast, and</i></p> <p><i>(e) to ensure that the visual amenity of the coast is protected, and</i></p> <p><i>(k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic qualities of the surrounding area, and</i></p> <p><i>(i) to encourage a strategic approach to coastal management</i></p> <p>The Proposal if it were to proceed would allow for development out of scale and character with the surrounding area which is generally characterised by detached single dwellings. It would not protect the visual amenity of the area, and promotes an approach to coastal management that is not strategic</p>
(Housing for Seniors or People with a Disability) 2004	<p>Under the Standard Instrument, 'E' zones are regarded as environmental protection zones. In this regards the site is known to meet the criteria for exclusion under the SEPP for environmentally sensitive sites. The E zones objectives include aesthetics as a valid reason for protection. Allowing the proposal to proceed would not be consistent with the SEPP and render the Planning Proposal inconsistent with the objectives of the SEPP.</p>

Table 2. Compliance with State Environmental Planning Policies (SEPPs)

SEPPs (as at June 2018)		Applicable	Consistent
1	Development Standards	YES	YES
19	Bushland in Urban Areas	YES	YES
21	Caravan Parks	N/A	N/A
30	Intensive Agriculture	N/A	N/A
33	Hazardous and Offensive Development	N/A	N/A
36	Manufactured Home Estates	N/A	N/A
44	Koala Habitat Protection	N/A	N/A
47	Moore Park Showground	N/A	N/A
50	Canal Estate Development	N/A	N/A
52	Farm Dams and Other Works in Land and Water Management Plan Areas	N/A	N/A
55	Remediation of Land	YES	YES
62	Sustainable Aquaculture	N/A	N/A
64	Advertising and Signage	YES	YES
65	Design Quality of Residential Apartment Development	YES	YES
70	Affordable Housing (Revised Schemes)	YES	YES
	(Affordable Rental Housing) 2009	YES	YES
	(Building Sustainability Index: BASIX) 2004	YES	YES
	(Coastal Management) 2018	YES	NO
	(Educational Establishments and Child Care Facilities) 2017	N/A	N/A
	(Exempt and Complying Development Codes) 2008	YES	YES
	(Housing for Seniors or People with a Disability) 2004	YES	NO
	(Infrastructure) 2007	N/A	N/A
	(Integration and Repeals) 2016	N/A	N/A
	(Kosciuszko National Park – Alpine Resorts) 2007	N/A	N/A
	(Kurnell Peninsula) 1989	N/A	N/A
	(Mining, Petroleum Production and Extractive Industries) 2007	N/A	N/A
	(Miscellaneous Consent Provisions) 2007	N/A	N/A
	(Penrith Lakes Scheme) 1989	N/A	N/A
	(Rural Lands) 2008	N/A	N/A
	(State and Regional Development) 2011	N/A	N/A
	(State Significant Precincts) 2005	N/A	N/A
	(Sydney Drinking Water Catchment) 2011	N/A	N/A
	(Sydney Region Growth Centres) 2006	N/A	N/A
	(Three Ports) 2013	N/A	N/A
	(Urban Renewal) 2010	N/A	N/A
	(Vegetation in Non-Rural Areas) 2017	YES	YES
	(Western Sydney Employment Area) 2009	N/A	N/A
	(Western Sydney Parklands) 2009	N/A	N/A
	Sydney Regional Environmental Plan No 8 (Central Coast Plateau Areas)	N/A	N/A
	Sydney Regional Environmental Plan No 9 – Extractive Industry (No 2 – 1995)	N/A	N/A
	Sydney Regional Environmental Plan No 16 – Walsh Bay	N/A	N/A
	Sydney Regional Environmental Plan No 20 – Hawkesbury-Neapean River (No 2 – 1997)	YES	YES
	Sydney Regional Environmental Plan No 24 – Homebush Bay Area	N/A	N/A
	Sydney Regional Environmental Plan No 26 – City West	N/A	N/A
	Sydney Regional Environmental Plan No 30 – St Marys	N/A	N/A
	Sydney Regional Environmental Plan No 33 – Cooks Cove	N/A	N/A
	Sydney Regional Environmental Plan (Sydney Harbour	N/A	N/A

	Catchment) 2005		
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6. Is the planning proposal consistent with applicable Ministerial Directions?

No. The Planning Proposal is mostly inconsistent with the applicable Directions (as shown in Attachment 1). Comments on each of the applicable directions are provided in Table 3 below.

Table 3: Ministerial (Local Planning) Directions (Formerly Section 117 Directions)

Ministerial Direction	Comment
2 Environment and Heritage	
2.1 Environment Protection Zones	
The objective of this direction is to protect and conserve environmentally sensitive areas.	<p>The Planning Proposal is inconsistent with the direction. It is clearly inconsistent with 2.1 (5) by which 'A <i>planning proposal that applies to land within an environmental protection zone or otherwise identified for environmental protection purposes in an LEP must not reduce the environmental standards that apply to the land (including modifying development standards that apply to the land)</i>'. The site is identified as an environmental protection zone, due to the E4 Environmental Living zoning.</p> <p>Under direction 2.1(6) a planning proposal may be inconsistent if the relevant planning authority can justify an inconsistency through a strategy or study. However no strategy or study justifying the inconsistency has been prepared. Further the <i>Pittwater Local Planning Strategy (2011)</i> identified the site as being of environmental and aesthetic significance and incapable of sustaining more intensive development. The proposed rezoning would allow for a seniors living development that is more appropriate for a R3 Medium Density Residential zone.</p>
2.2 Coastal Protection	
The objective of this direction is to implement the principles in the NSW Coastal Policy	<p>The Planning Proposal is inconsistent with this direction. This direction applies to land within the coastal zone as identified under the <i>Coastal Management Act 2016</i>, including land identified as coastal use. The subject properties are identified as such.</p> <p>2.2 (5) of the direction states that 'A <i>planning proposal must not rezone land which would enable increased development or more intensive land-use on land;</i></p> <p><i>(b) that has been identified as land affected by a current or future coastal hazard in a local environmental plan or development control plan, or a study or assessment undertaken:</i></p> <p>(i) <i>By or on behalf of the relevant public authority and provided to the relevant planning proposal</i></p>

	<p><i>authority, or</i> (ii) <i>By or on behalf of a public authority and provided to the relevant planning authority and the planning proposal authority</i></p> <p>The subject properties have been identified as being subject to coastal inundation, a coastal hazard as defined in the <i>Coastal Management Act 2016</i>. The proposed rezoning of the land would enable more intensive development through the greater range of land uses permissible in the R2 Low Density Residential zone under the Pittwater Local Environmental Plan than the E4 Environmental Living zone, including dual occupancy. The permissible land uses would also be expanded by the applicability of more State Environmental Planning Policies to the site, including the Seniors Living SEPP which was the original intent of this Planning Proposal. Such a development would increase the number of dwellings on the site than currently there, a dramatic increase in scale and density of development, in clear violation of the objectives of the Direction.</p> <p>While 2.2 (7) allows for an inconsistency, no such strategy or study has been provided with the Planning Proposal to justify an inconsistency. With regards to an inconsistency justified by a District Plan, the Planning Proposal is inconsistent with the relevant District Plan (North Sydney District Plan). It is specifically inconsistent with Planning Priority 17 - Protecting and enhancing scenic and cultural areas and Planning Priority 22 - Adapting to the impacts of urban and natural hazards and climate change. Further discussion of these two planning priorities and this proposal's inconsistency with them can be found under Q3 a . The proposed inconsistency is not considered to be of minor significance either.</p>
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	
<p>The objectives of this direction are to:</p> <ul style="list-style-type: none"> a) encourage a variety of choice of housing types to provide for existing and future housing needs, b) to make efficient use of existing infrastructure and services and ensure 	<p>This direction is relevant to this Planning Proposal. However the proposal is inconsistent with objective C. This proposal will increase the impact of residential development on environmental land by increasing the scale and bulk of development</p>

that new housing has appropriate access to infrastructure and services, and c) to minimise the impact of residential development on the environment and resource lands.	on land that currently zoned E4 Environmental Living.
3.4 Integrating Land Use and Transport	
<p>The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:</p> <p>(a) improving access to housing, jobs and services by walking, cycling and public transport, and</p> <p>(b) increasing the choice of available transport and reducing dependence on cars, and</p> <p>(c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and</p> <p>(d) supporting the efficient and viable operation of public transport services, and</p> <p>(e) providing for the efficient movement of freight.</p>	<p>The Planning Proposal is considered to be inconsistent with the objectives of this Direction. It is considered to not improve access via walking or cycling and does not reduce the extent of private vehicle trips as it is located 800m from the Newport village centre. It is also not located close to where there is frequent high capacity public transport required to justify rezonings of land and increases in its development potential.</p> <p>The proposal is considered to also be inconsistent with the aims and principles of <i>Improving Transport Choice – Guidelines for planning and development (DUAP 2001)</i>. It is specifically contradictory to:</p> <ul style="list-style-type: none"> • Principle 1 – Concentrate in Centres • Principle 2 – Mix Uses in Centres • Principle 3 – Align centres with corridors, and • Principle 4 – Link public transport with land uses strategies.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	
The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.	The site is identified as being Class 5 on the Acid Sulfate mapping of the Pittwater Local Environmental Plan. It is considered that this issue could be adequately addressed at the development application stage if this Planning Proposal was to proceed.
4.3 Flood Prone Land	
<p>The objectives of this direction are:</p> <p>(a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and</p> <p>(b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.</p>	<p>The Planning Proposal is considered to be inconsistent with this direction. 4.3(5) of the direction states that '<i>A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones [emphasis added] to a Residential, Business, Industrial, Special Use or Special Purpose Zone.</i> The properties are currently zoned E4 Environmental Living, an environmental protection zone under the Standard Instrument.</p> <p>5.5 (6) of the direction states that '<i>A planning proposal must not contain provisions that</i></p>

	<p><i>apply to the flood planning areas which;</i></p> <p><i>(a) permit development in floodway areas,</i> <i>(b) permit development that will result in significant flood impacts to other properties,</i> <i>(c) permit a significant increase in the development of that land,</i> <i>(d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services</i></p> <p>It is noted that Northern Beaches Council is in the process of updating flood mapping across the LGA, including within the Newport area. The exhibited Draft Newport Flood Study 2018 indicates that the subject sites are subject to flooding impacts including being isolated. Nooal Street is overtopped by flooding both near the intersection with Irrubel Road and Bardo Road.</p> <p>This Planning Proposal is considered to be inconsistent with the aims and intent of the direction to avoid placing more people and property at risk. The risk is considered more severe given that the eventual development outcome is more likely to house people with mobility issues that require assistance in an evacuation event.</p>
6. Local Plan Making	
6.1 Approval and Referral Requirements	
The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	<p>The Planning Proposal is consistent with the terms of this direction as follows:</p> <p>a) provisions that require the concurrence, consultation or referral of DAs to a Minister or public authority are minimised</p> <p>(b) no provisions are contained in the Planning Proposal requiring concurrence, consultation or referral of a Minister or public authority.</p> <p>(c) no development is identified as designated development.</p>
6.2 Reserving Land for Public Purposes	
The objectives of this direction are: (a) to facilitate the provision of public services and facilities by reserving land for public purposes, and (b) to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.	The Planning Proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.
6.3 Site Specific Provisions	
The objective of this direction is to	The Planning Proposal contains no site-

discourage unnecessarily restrictive site specific planning controls.	specific planning controls
7 Metropolitan Planning	
7.1 Implementation of A Plan for Growing Sydney	
The objective of this direction is to give legal effect to the planning principles; directions; and priorities for subregions, strategic centres and transport gateways contained in A Plan for Growing Sydney.	

Section C – Environmental, social and economic impact

7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

NO

8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

NO

9. Has the Planning Proposal adequately addressed any social and economic effects?

YES

Section D – State and Commonwealth interests

10. Is there adequate public infrastructure for the planning proposal?

This will be addressed at development application stage.

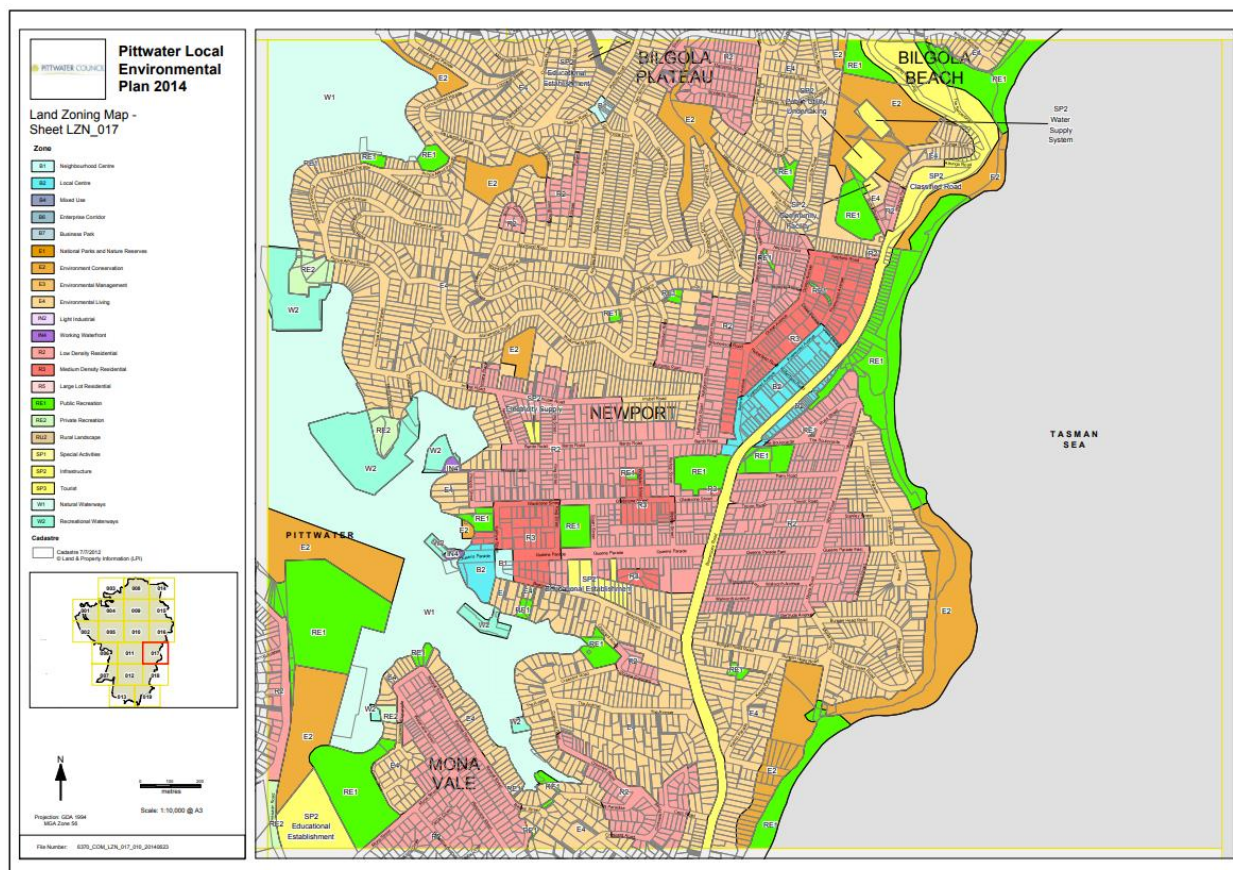
11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

N/A

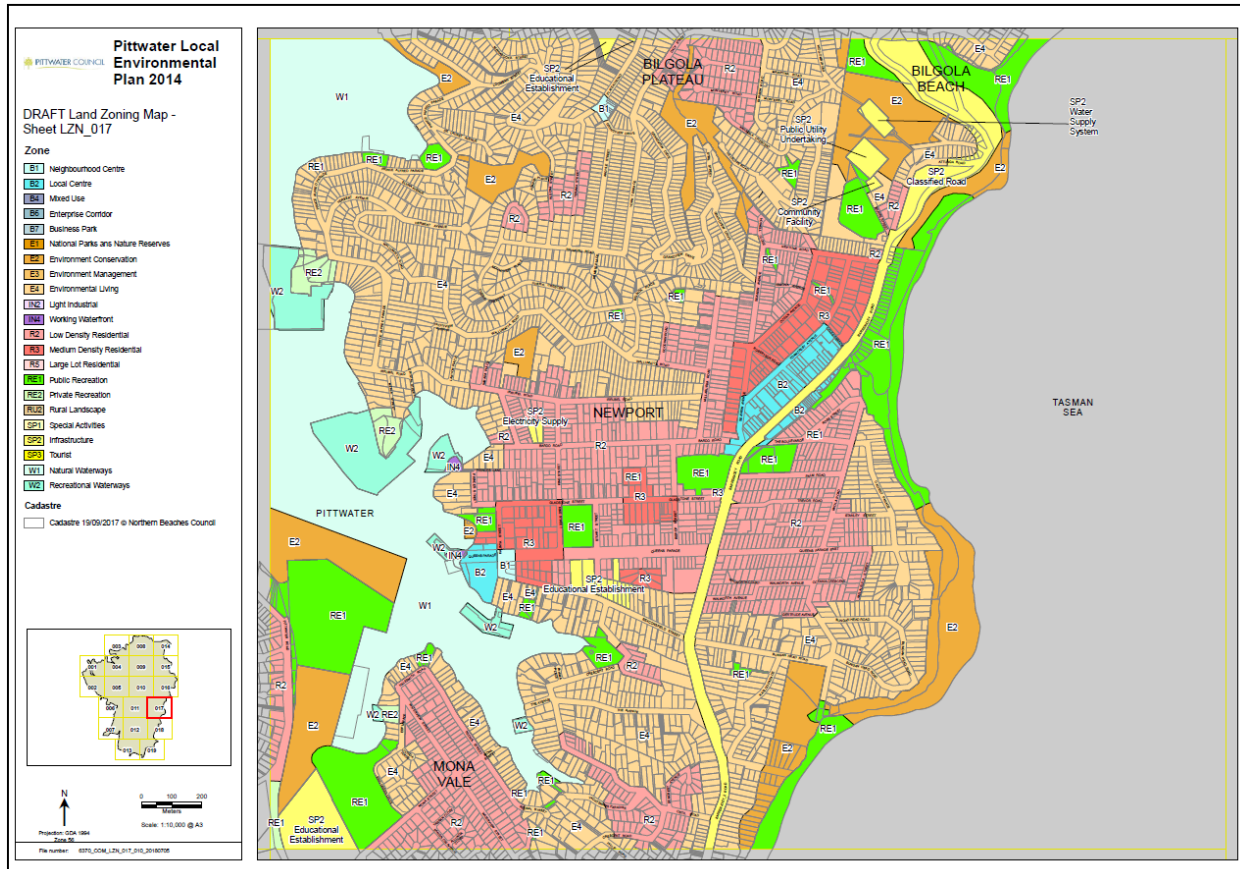
Part 4 – Maps

The following maps are associated with the Planning Proposal.

Current Land Zoning Map Sheet LZN_017



Proposed Land Zoning Map Sheet LZN_017



Part 5 – Community Consultation

Council will place the planning proposal on public exhibition in accordance with future Gateway Determination and consistent with Council's Community Engagement Policy including:

- A public notice in the Manly Daily notifying of the public exhibition;
- Letters to key stakeholders;
- Hard copies of the exhibition material at Council's offices; and
- Electronic copies of the exhibition material on Council's website.

The Gateway determination will confirm the public consultation that must be undertaken.

Part 6 – Project Timeline

Task	Anticipated timeframe
Referral to Department of Planning & Environment for Gateway determination	August 2018
Issue of Gateway determination	September 2018
Government agency consultation	September 2018
Public exhibition period	September 2019
Consideration of submissions	October 2019
Report to Council to determine Planning Proposal	December 2019
Submit Planning Proposal to the Department of Planning & Environment for determination	Published by February 2019

Attachment 1 – Ministerial directions

Directions		Applicable	Consistent
1	Employment and Resources		
1.1	Business and Industrial Zones	NO	N/A
1.2	Rural Zones	NO	N/A
1.3	Mining, Petroleum Production and Extractive Industries	NO	N/A
1.4	Oyster Aquaculture	NO	N/A
1.5	Rural Lands	NO	N/A
2	Environment and Heritage		
2.1	Environment Protection Zones	YES	NO
2.2	Coastal Protection	YES	NO
2.3	Heritage Conservation	NO	N/A
2.4	Recreation Vehicle Areas	NO	N/A
2.5	Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEP's	NO	N/A
3	Housing, Infrastructure and Urban Development		
3.1	Residential Zones	YES	NO
3.2	Caravan Parks and Manufactured Home Estates	NO	N/A
3.3	Home Occupations	YES	YES
3.4	Integrating Land Use and Transport	YES	NO
3.5	Development Near Licensed Aerodromes	NO	N/A
3.6	Shooting Ranges	NO	N/A
4	Hazard and Risk		
4.1	Acid Sulfate Soils	YES	YES
4.2	Mine Subsidence and Unstable Land	NO	N/A
4.3	Flood Prone Land	YES	NO
4.4	Planning for Bushfire Protection	NO	N/A
5	Regional Planning		
5.1	Implementation of Regional Strategies	NO	N/A
5.2	Sydney Drinking Water Catchments	NO	N/A
5.3	Farmland of State and Regional Significance on the NSW Far North Coast	NO	N/A
5.4	Commercial and Retail Development along the Pacific Highway, North Coast	NO	N/A
5.5	Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked 18 June 2010)	NO	N/A
5.6	Sydney to Canberra Corridor (Revoked 10 July 2008 See amended Direction 5.1)	NO	N/A
5.7	Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	NO	N/A
5.8	Second Sydney Airport: Badgerys Creek	NO	N/A
5.9	North West Rail Link Corridor Strategy	NO	N/A
5.10	Implementation of Regional Plans	NO	N/A
6	Local Plan Making		
6.1	Approval and Referral Requirements	YES	YES
6.2	Reserving Land for Public Purposes	NO	N/A
6.3	Site Specific Provisions	YES	YES
7	Metropolitan Planning		
7.1	Implementation of A Plan for Growing Sydney	YES	YES
7.2	Implementation of Greater Macarthur Land Release Investigation	NO	N/A
7.3	Parramatta Road Corridor Urban Transformation Strategy	NO	N/A
7.4	Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	NO	N/A
7.5	Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	NO	N/A
7.6	Implementation of Wilton Priority Growth Area Interim Land Use	NO	N/A

	and Infrastructure Implementation Plan		
7.7	Implementation of Glenfield to Macarthur Urban Renewal Corridor	NO	N/A